

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4085

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

v.

NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC., ET AL.,

RESPONDENT.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,

*Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.*

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P/S



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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Nassau County Health
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Case Nos: 29-CA-4797, 4798, etc.

12.30.75 Charge filed in Case No. 29-CA-4797
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12.30.75 Charge filed in Case No. 29-CA-4800
12.30.75 Charge filed in Case No. 29-CA-4801
12.30.75 Charge filed in Case No. 29-CA-4802
12.30.75 Charge filed in Case No. 29-CA-4803
3.31.76 Complaint, dated
4.16.76 Respondents' Answer St. James Nursing Home and
St. James Plaza, dated
4.16.76 Respondent's Answer Hudson View Nursing
Home, dated
4.19.76 Amended Charge filed in Case No. 29-CA-4797
4.19.76 Amended Complaint, dated
4.20.76 Respondent's Answer Daleview Nursing Home, dated
4.21.76 Respondents' Answer Hudson View Manor and
Hudson View Nursing Home, dated
5.11.76 Respondents' Answer Hudson View Manor and
Hudson View Nursing Home, dated
5.13.76 Respondents' Answer Nassau County Health Facilities
Assoc., Inc. Huntington Nursing Home and Carillon
House H.R.F., dated
5.13.76 Respondent's Answer Daleview Nursing Home, dated

5.18.76 Respondents' Answer St. James Nursing Home
and St. James Plaza, dated

5.24.76 Order Rescheduling hearing, dated

5.27.76 Request for Postponement, dated

6. 4.76 Denial of postponement, dated

6.22.76 Hearing opened

6.23.76 Hearing closed

11.18.76 Administrative Law Judge's Decision, issued

12.20.76 Respondents' Nassau County Health Facilities
Association, Inc. and its members and
Huntington Nursing Home and Carillon House
Nursing Home and H.R.F. Exceptions to the
Decision of the Administrative Law Judge,
received

12.30.76 Respondents' St. James Nursing Home and St.
James Plaza Exceptions to the Administrative
Law Judge's Decision, received

12.30.76 Respondents' Hudson View (Manor and Home's
Exceptions to the Decision of the
Administrative Law Judge, received

12.30.76 Charging Party's Exceptions to the
Administrative Law Judge's Decision
received

1.28.77 Board's Decision and Order, dated

JD-752-76
New York, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

file 18, 1976

NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC. and its members:

BAYVIEW NURSING HOME,
CENTRAL ISLAND NURSING HOME,
COMMUNITY DRIVE NURSING HOME,
DALEVIEW NURSING HOME,
FIVE TOWNS NURSING HOME,
FIVE TOWNS HEALTH RELATED FACILITY,
FRANKLIN PARK NURSING HOME,
GLENGARIFF NURSING HOME,
GRANDELL NURSING HOME,
LONG ISLAND TIDES NURSING HOME,
MAYFAIR NURSING HOME,
NASSAU NURSING HOME,
PARKVIEW NURSING HOME,
RIVERHEAD NURSING HOME,
ROCKVILLE NURSING HOME,
SOUTH SHORE NURSING HOME.

• Case No. 29-CA-4797

ST. JAMES NURSING HOME

Case No. 29-CA-4798

ST. JAMES PLAZA

Case No. 29-CA-4799

HUNTINGTON NURSING HOME

Case No. 29-CA-4800

HUDSON VIEW MANOR

Case No. 29-CA-4801

HUDSON VIEW NURSING HOME

Case No. 29-CA-4802

CARILLON HOUSE NURSING HOME AND
H.R.F.

Case No. 29-CA-4803

Respondents

and

LOCAL 1115, JOINT BOARD NURSING
HOME AND HOSPITAL EMPLOYEES DIVISION

Charging Party

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for the General Counsel.
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for Respondents Huntington and Carillon.
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for Respondents Hudson View (Manor and Home).
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J. Ozias Kaufman
Babylon, New York,
for Respondent Daleview.
Richard M. Greenspan, Esq., of
Charles R. Katz,
New York, New York,
for the Charging Party.

DECISION

HERZEL H.E. PLAINE, Administrative Law Judge:

Respondents, comprising an Association of sixteen nursing homes and health related facilities and six independents located in the state of New York, all of whom have generally similar collective bargaining contracts with the Charging Party (the Union) for a four year period from January 1, 1975, have been charged with violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) because of their failure and refusal to pay and provide midterm wage and benefit increases to covered employees that became effective under the contracts on January 1, 1976. 1/

1/ A consolidated complaint, consolidating the seven cases against the Association and the six independents, respectively, was issued May 3, 1976, and rest on charges filed by the Union in each of the seven cases on December 30, 1975, plus an amended charge against the Association filed on April 19, 1975.

Respondents concede the failure to honor the contractual wage and benefit increases, but deny any violation of the Act. Because the occupants of Respondents' nursing homes and facilities are largely Medicaid patients, and Respondents are reimbursed for their services to such patients out of federal-state Medicaid funds at rates fixed annually by the administering state agency, Respondents contend that when, on October 31, 1975, the administering state agency made a change in its rate-setting practice by temporarily continuing (subject to later adjustment) the 1975 reimbursement rates for 1976, it became impossible for them to pay their employees the 1976 contractual wage and benefit increases, and, say Respondents, there was implicit in the collective bargaining process between Respondents and the Union an understanding that the implementation of the negotiated wage and benefit increases was contingent upon increased Medicaid reimbursement rates reflecting the increased labor costs.

Apart from the alleged understanding, Respondents appear to contend further that as part of a regulated industry -- the nursing home industry -- whose services are regulated by health agencies of the state and federal governments, Respondents are entitled, with respect to their collective bargaining obligations, to a waiver of the standards of the Act that apply to other forms of regulated and unregulated mercantile businesses, because of the state agency's action respecting 1976 rates.

The Union and General Counsel deny that there was any contingent arrangement, express or implied, for payment of the wage and benefits increases, or that Respondents are entitled to any special exception from the collective bargaining obligations they have incurred.

The consolidated cases were tried in Brooklyn, New York on June 22-23, 1976. Counsel for the Respondents and the Union have filed briefs. General Counsel has relied upon his oral argument.

Upon the entire record of the case, including my observation of the witnesses and consideration of the briefs and arguments, I make the following:

Findings of Fact

I. Jurisdiction

Respondent Nassau County Health Facilities Association, Inc. (the Association), a New York corporation with its principal place of business in New York City, is an association of employers engaged individually in the operation of the sixteen nursing homes and health related facilities, located in Nassau and Suffolk counties, Long Island,

identified with the Association in the caption of the case. Among other things, the Association bargains collectively on behalf of its employer-members with the Union concerning the terms and conditions of employment governing the employees of the employer-members.

5

In the year prior to issuance of the consolidated complaint, a representative period, the employer-members of the Association individually and collectively derived gross revenues in excess of \$100,000 from their business operations. In the same period the employer-members of the Association, individually and collectively, purchased, and caused to be delivered from points outside the state of New York to their respective places of business, supplies and materials valued in excess of \$50,000.

10

Respondents St. James Nursing Home, St. James Plaza, Huntington Nursing Home, and Carillon House Nursing Home and Health Related Facility are New York corporations ^{2/} engaged, respectively, in the operation of a nursing home or health related facility or both, identified by those names, on Long Island. Respondents Hudson View Manor and Hudson View Nursing Home are also New York corporations each engaged, respectively, in the operation of a nursing home and health related facility, identified by those names, in Yonkers, county of Westchester, New York. For convenience, these six Respondents, not affiliated with the Association, will sometimes be referred to as the independent Respondents or independents.

20

In the year prior to issuance of the consolidated complaint, a representative period, each of the independent Respondents derived gross revenues in excess of \$100,000 from their respective business operations. In the same period each of them purchased, and caused to be delivered from points outside the state of New York to their respective places of business, supplies and materials valued in excess of \$50,000.

25

30

As the parties admit, the Respondent Association and its employer-members and the six independent Respondents are employers within the meaning of Section 2(2), (6), and (7) of the Act.

35

^{2/} At trial, on representation of counsel for the St. James Respondents accepted by General Counsel that St. James Nursing Home and St. James Plaza is each a partnership, the complaint was amended to reflect that fact. However the current collective bargaining contracts with the Union for both of these Respondents, introduced later in the trial, exhibits GC-3a,b,c,d, and GC-4, show execution by SJNH Realty Corporation, d/b/a St. James Nursing Home (on exhibits GC-3a,b,c,d) and execution by SHRF Realty Corporation d/b/a St. James Plaza (on exhibit GC-4). To the extent necessary to effectuate the order in this case both the corporate and partnership descriptions shall be applicable to the St. James Respondents.

40

45

As the parties also admit, the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Unfair Labor Practices

A. Respondent's Business Operations and Union Relationships

5 The employer-members of the Association and the independents
10 individually operate either nursing homes or health related facilities or
in some cases both, located on Long Island, New York, except for the
Hudson Respondents who are located in Yonkers, New York.

15 According to Burtell Cutler, president of the Association, a
nursing home is distinguished from a health related facility by the fact
that a nursing home gives intensive nursing care to its occupants called
patients, whereas a health related facility provides lesser care to its
occupants who are called residents (rather than patients) to indicate that
20 they can partly care for themselves physically but need social care.
(The distinction plays no part in this case, and use of the description
nursing home hereafter will include both kinds of facilities.)

25 In operating the homes and facilities, Respondents employ nurses,
attendants, kitchen help, maintenance personnel, and clericals. These
employees are (for the most part) unionized and are members of various
locals of the Union, which locals are headed by a Joint Board that does
the collective bargaining and policing of contracts for all of the affected
locals.

30 A pattern has developed whereby the Union has evolved four types
of collective bargaining contracts covering its members, namely, a contract
for licensed practical nurses, one for registered nurses, one for registered
nurse supervisors, and one for blue collar or unlicensed workers. The
Association has all four contracts with the Union (exhibits GC-2a,b,c, and d).
35 Among the independents, St. James Nursing Home, also has all four contracts
(exhibits GC-3a,b,c, and d); the others of the independents have some, or
variations, of the four contracts (exhibits GC-4,5,6a,b,c,d, 7, 8a and b).
All of the contracts cover between four and five thousand employees,
according to Alex De Laurentis, vice president of the Union's Joint Board.

40 De Laurentis testified that the practice has been for the
Association to bargain with the Union separately from the independents,
with the Association contracts taking the lead and the independents usually
falling into line. Nevertheless, the bargaining with the independents is
45 not pro forma and, from examples given by Vice President Gordon of Hudson
View Nursing Home, the independents may sometimes achieve more favorable
terms, such as a lesser wage rate or less costly night shift pay differential,
than agreed to by the Association.

The current Union contracts with the Association were negotiated in November and December 1974, effective January 1, 1975. The contracts with some of the independents were not concluded until early 1975, nevertheless all of the contracts but one were made effective as of January 1, 1975. 3/

According to President Cutler of the Association, the occupants of the nursing homes average 90 percent Medicaid patients. Vice President Gordon of Hudson View Nursing Home said the occupancy of his home was 85 to 90 percent Medicaid patients.

Both men testified that the nursing homes are licensed by the state and the kinds of services they render must comply with prescribed standards. The nursing homes may not discriminate in favor of patients able to pay their own way against patients who pay through Medicaid, and may not decline to take Medicaid patients in preference to non-Medicaid patients.

The rate that the nursing home may charge a Medicaid patient, and for which the home is reimbursed by Medicaid money, is a daily rate, computed by the state agency, taking into account the costs of the service. Since costs may vary in different areas, the Medicaid reimbursement rate may vary by locality, but as George Meitch, Director of the Bureau of Reimbursement Rate Setting, New York State Health Department, pointed out, the home may not charge the Medicaid patient more than the applicable Medicaid rate.

The source of the Medicaid funds are 50 percent federal, 25 percent state, and 25 percent municipal or local, but the state agency sets the rates. Rate Director Meitch testified that in New York the Commissioner of Health (State Health Department) computes and certifies the rates to the State Director of the Budget, who approves the rates. By law, the rates must be promulgated 60 days prior to the succeeding year. Thus, as Rate Director Meitch and Association President Cutler testified, in advance of each year (prior to calendar 1976) the state has automatically been providing rate adjustments which have been rate increases, based on the pattern of past and projected increases in costs of labor, food, fuel, and other goods and services. In addition a nursing home or homes could apply, by appeal, for a further rate adjustment if it thought additional cost factors had not been taken into account or that mistakes had been made.

3/ Hudson View Nursing Home's contract covering registered nurses, (exhibit GC 6-c), became effective July 1, 1975.

Rate Director Meitch described the general annual method of calculating the Medicaid reimbursement rates. As an example, for calendar 1975, for which the rates were computed in 1974 (and promulgated on or about November 1, 1974), actual 1973 costs were taken, to which
5 was added a composite inflation trend factor, which represented projected increases for 1975 in the costs of service (wages, fuel, food, and other goods) deemed necessary to keep the health care field current with the general economy of the area. In making the projections, the state rate setting bureau obtained its figures on cost of goods increases from the
10 U.S. Bureau of Labor Statistics; but since there was and is no comparable source of data on wages for the entire economy of the area, said Meitch, the state rate setting bureau used (and will continue to use) the state Civil Service - Health Department joint continuing survey of hospital wage costs as the basis for comparison and projection of wage cost
15 movements for the nursing homes.

Thus, actual increases in nursing home costs for 1975 and in prior years were not, by design, made part of the inflation trend factor for the year, though the increases might have been encompassed by the
20 trend figure adopted. There was one exception, said Rate Director Meitch, that existed temporarily in the early 1970's up to 1975. Because the State Health Department was of the view, in that period, that nursing home employees were not paid as well as others in the general health field, it permitted a "catch-up" in the Medicaid rates for those calendar years
25 by allowing appeals from nursing homes based on wage increases that exceeded what had been allowed for in the projected inflation trend factor. Accordingly, said Meitch, in the 1975 rates, as they affected Respondents, who had incurred a 17 percent wage increase for 1975 as a result of their current contracts with the Union, the State Health Department recognized
30 on appeal the whole 17 percent wage increase even though part of the increase may have exceeded the projected inflation trend factor.

In 1975, said Rate Director Meitch, this exceptional practice was ended because of the State Health Department's view that the nursing
35 home employees had caught up in pay with other employees in the health field and in the general economy, and because of the fiscal "crunch" (shortage of funds to match the general rise in governmental costs) that the state and local governments were experiencing.

On October 31, 1975, by letters (R-14 and 15), the State Health
40 Department notified Respondents (among others) that the Medicaid reimbursement rates for 1976 would remain the same as for 1975 on an interim basis, and that the final 1976 adjustments and rates would be promulgated as soon as possible; also, that labor costs exceeding the inflation trend
45 factor would not constitute a basis for appeal (eliminating the "catch-up" practice described above).

The 1976 permanent rates had not been promulgated at the time of trial. Rate Director Meitch testified that the interim (or temporary) rates were announced in late 1975 when it became apparent that the Governor was going to ask the state legislature to freeze the then current Medicaid reimbursement rates at the 1975 levels for a fifteen month period from January 1, 1976 to March 31, 1977. In the spring of 1976, the legislature, instead of following the Governor's proposal, enacted a provision calling for adjustment of the Medicaid rates from January 1, 1976 to March 31, 1977 on a "prudent buyer" basis (i.e. costs determined to be on a reasonable basis) and taking into account the levels of care the nursing homes provide, with the adjusted rates retroactive to January 1, 1976. Meitch testified that in calculating the final 1976 rates for nursing homes his bureau would develop ceilings for various types of care, determine the allowable costs for 1974 and project these into 1976 by arriving at and adding the composite inflation trend factor for increases in costs of goods and wages. As in the past, the wage increase component of the inflation trend factor would be derived from comparison with that of the inflation trend factor for hospitals taken from the state survey but, of course, said Meitch, weighted differently for the nursing homes, since they have a different mix of labor and non-labor costs than hospitals. However, he said, the State Health Department would not be looking at the actual 1976 wage costs in fixing the ultimate 1976 rates; nor would the Department be likely to permit use of the 1976 wage increases for a "catch-up" appeal as it had permitted in the past few years. Meitch further testified that the Commissioner of Health hoped to announce the permanent 1976 rates by August 1, 1976, but whenever announced, retroactive to January 1, 1976.

B. Respondents Repudiate the Union
Contract 1976 Increases

Union Vice President De Laurentis and Association President Cutler and Hudson View Vice President Gordon testified that, as the result of hard give-and-take bargaining, the current contracts, effective January 1, 1975, between the Union on the one hand, and the Association and independents on the other, provided for successive wage and benefits increases for the employees in 1975, 1976, and 1977. ^{4/} For 1978 the Union has the option of requesting a reopening of negotiations.

^{4/} In this connection Rate Director Meitch of the State Health Department noted that the state of New York and its agencies do not participate in the collective bargaining negotiations between the Respondents and the Union and do not exercise any control over wage proposals or agreements. The wages agreed upon are arrived at privately between the Union and the Association and independents. The policy that the state does not and will not participate in the labor contract negotiations was reiterated in a reply letter on behalf of the Governor to the Association, dated February 17, 1976, exhibit R-9.

De Laurentis testified that the Respondents paid the employees the 1975 increases (except for a partial default in 1975 by Respondent Huntington Nursing Home but not accompanied by any repudiation of the 1975 obligation).

5 However, in early December 1975, Union Vice President De Laurentis was called to a meeting by representatives of the Association and some of the independents. They had earlier been informed, as described under heading A above, that the 1976 Medicaid rates were interim rates that
10 carried over without increase (at least temporarily) the 1975 rates, and they had learned of the Governor's proposal that the legislature freeze the 1976 rates at the 1975 level. They told De Laurentis. They also told him that the nursing homes could not pay the 1976 contract increases in wages and benefits, the first of which were due January 1, 1976, and made
15 suggestions of ways to relieve the nursing homes of the obligation to meet the 1976 contract increases. As De Laurentis described it (and there was no basic contradiction) this was not a negotiation but a discussion to persuade him to relinquish the increases that had been negotiated into contracts.

20 Union Vice President De Laurentis replied that the Respondents and the Union had negotiated the contracts in good faith, and that the Union would take nothing less in wages and benefits than had been agreed upon. He also rejected a suggestion that Respondents be permitted to
25 reduce the workforce since, he said, it was clear that those remaining would have to pick up the work of those to be discharged, and this was also contrary to the contract provisions.

30 Respondents' representatives asked if the Union would use its good offices to help stop the proposed rate freeze by writing to legislators, the Governor, and others. De Laurentis agreed that he would cooperate and thereafter sent telegrams to all members of the New York legislature, to the Governor, and to the State Health Department, decrying the serious situation created for the nursing home industry if there was
35 going to be no increases in Medicaid rates for 1976.

 Following the meeting between Union representative De Laurentis and Respondent's representatives, by telegrams and letters, sent in the period between December 15 and 24, 1975, the Association, the independents,
40 and some of the Association members individually, notified the Union that each was suspending the increases in wages and benefits due employees on January 1, 1976 (exhibits GC-9 through 16). The Association telegram from President Cutler (exhibit GC-9) was typical, stating that the wage increase, the cost of living adjustment, the increased contribution to the welfare fund, the increased contribution to the legal service fund, and the
45

increase in sick leave, all due January 1, 1976, would be withheld because the freeze in Medicaid rates made it impossible to pay these increases. 5/ De Laurentis testified that pursuant to such notices from the Association and independents none of the contract increases in wages and benefits for 1976 have been paid. 6/

C. Respondent's Legal Obligation

An employer acts in derogation of his bargaining obligation under Section 8(d) of the Act, which was designed to stabilize during a contract term agreed-upon conditions of employment, and hence violates Section 8(a)(5), when without consent of the union, he modifies terms and conditions of employment contained in a contract between the employer and the union, or otherwise repudiates his undertakings under the contract before the term of the contract has run its course -- and this even though he has previously offered to bargain with the union on the subject and the union has refused. C and S Industries, Inc., 158 NLRB 454, 456-458 (1966). As stated in Oak Cliff - Golman Baking Co., 202 NLRB 614, 616 (1973):

"The Respondent's unilateral change in wages which is a basic term or condition of employment manifestly constitutes a 'modification' within the meaning of Section 8(d). Such action by Respondent clearly being in derogation of its statutory obligation under Section 8(d) was therefore violative of Section 8(a)(5) of the Act." 7/

In reaffirming the Golman decision, supra, the Board said in Oak Cliff - Golman Baking Co., 207 NLRB 1063, 1064 (1973):

"[A] clear repudiation of the contract's wage provision is not just a mere breach of contract, but amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship."

5/ President Cutler testified that, as Association president and an employer, he was prepared to reimburse the employees for the increases denied them if the Association members got the increased funds from the state of New York. Interestingly, his telegram denying the increases did not say this.

6/ There was one exception, according to De Laurentis. Daleview Nursing Home, which apparently has dropped out of the Association, made a late payment of one half of the increases due January 1 on June 11, 1976, and promised to pay the other half on June 25, 1976.

7/ The Supreme Court accepted the validity of the principle when it noted that a mid-term unilateral modification of a contract "is a prohibited unfair labor practice . . . when it changes a term that is a mandatory rather than a permissive subject of bargaining." Allied Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 185 (1971).

The fact that the unfair labor practice is also a breach of contract for which the injured party might seek another remedy, such as a suit for damages under Section 301 of the Act, does not displace the authority of the Board to deal with and remedy the unfair labor practice, Smith v. Evening News Ass'n, 371 U.S. 195, 197 (1962); N.L.R.B. v. Strong, 393 U.S. 357, 360-361 (1969). 8/

D. Respondents' Defenses

10 Respondents claim that implicit in the collective bargaining between Respondents and the Union was an understanding and recognition that honoring of the negotiated wage and benefits increases was and is contingent upon readjustment (by the state of New York) of the Medicaid reimbursement rates payable Respondents to reflect the increased labor costs.

15 The facts are to the contrary. Not only are the contracts devoid of any such contingent provision, but in the contract negotiations Respondents sought to obtain such a provision and the Union rejected it. Association President Cutler and Hudson View Vice President Gordon (for
20 the independents) testified that several times during their respective negotiations they asked the Union for a protective clause that would make the negotiated raises of pay and benefits payable as a pass-through of increased Medicaid rates, and if the rates were not increased that the raises would not be payable. Cutler and Gordon agreed at trial with
25 Union Vice President De Laurentis that the Union rejected such proposals, and the contracts were signed without such protective or contingent clauses. Thus the matter was not overlooked or left to the possibility of implication but was expressly rejected. 9/

30 8/ In this connection see Section 10(a) of the Act, providing that the power of the Board to prevent any person from engaging in any unfair labor practice affecting commerce "shall not be affected by any other means of adjustment or prevention that has been or may be established
35 by agreement, law, or otherwise. . . ."

9/ The Respondents asked for, and the Union gave all of them, Article 14, para. K (see, for example, exhibit GC-2a) which was based on the 1971-1974 experience under the federal Economic Stabilization Act when wages and prices were frozen. Article 14, para. K provides that, should federal
40 wage controls be instituted resulting in the deferring or cut back of any part of the contract, the parties shall meet in an attempt to allocate the monetary equivalent of the disapproved wages or benefits in a way that would result in governmental approval. If the monetary equivalent cannot be reallocated, then as the required contract payments become due
45 the employer would place in escrow the necessary amounts if the funds are reimbursed to the employer and the funding is approved by (Continued)

Respondents also contend that the "freezing" of the Medicaid reimbursement rates (actually not a freeze, but an interim or temporary continuation of 1975 rates for 1976 subject to retroactive adjustment when final 1976 rates are promulgated) has made it impossible for them to pay the 1976 contractual increases.

The Board has rejected such economic arguments and has held that alleged financial necessity is not a defense that excuses the unilateral repudiation of wage provisions of a collective bargaining contract. In Oak Cliff - Golman, supra, 207 NLRB at 1064, the Board said of the Respondent employer's claimed motive and intent (in reducing wages unilaterally in midterm of the contract because of the company's economic crisis) to preserve for employees jobs that they would otherwise lose:

"We have no doubt that Respondent's description of its motive and its object is a truthful one. But we have here a situation where these considerations are irrelevant. The unambiguous language of Section 8(d) of the Act explicitly: (1) forbade Respondent's midterm modification of the contract's wage provisions without the Union's consent; and (2) granted the Union the privilege it exercised to refuse to grant consent. Nowhere in the statutory terms is any authority granted to us to excuse the commission of the proscribed action because of a showing that either such action was compelled by economic need or that it may have served what may appear to us to be a desirable economic objective. To borrow the words of the Supreme Court . . . '[t]he law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts [and of the Board] cannot be set up against it in the supposed accommodation of its policy with the good intentions of the parties, and, it may be, of some good results.'"

To the same effect see C and S Industries, Inc., supra, 158 NLRB at 460.

Respondents further contend that because they are part of a regulated industry -- the nursing home industry -- whose services and (in the case of Medicaid patients) charges are regulated by governmental health agencies, they are entitled to a waiver of the collective bargaining standards of Section 8(d) that have been applied to other businesses, such as the bakery in Oak Cliff - Golman, supra.

9/ (Continued) the government agency having jurisdiction; and the employer would pay the escrowed funds to the affected employees when legally permissible subject to the employer being reimbursed by the applicable government agency. Cutler and Gordon conceded that Article 14, para. K does not relate to the New York state "freeze" on Medicaid reimbursement rates, for which they sought without success to obtain a clause similar to the above described protective clause.

From "day one" the Act has covered the labor relations of regulated, as well as unregulated, businesses such as public transportation companies (Pennsylvania Greyhound Lines Inc., 1 NLRB 1, Board decision enforcing provisions of Section 8, affirmed in 303 U.S. 261 (1938)), and public utilities whose services and rates are regulated by state and federal governmental agencies, who enjoy no special dispensation from the bargaining obligations of Section 8(d) by reason of the fact that they are so regulated. Respondents appear to recognize this, but claim that they should be distinguished from such regulated businesses in that the regulated utilities may apply to the regulating body for rate increases if their charges appear inadequate to recover cost of service, but, as they see it, Respondents may not do the same, at least with respect to the 1976 interim or temporary rates which for the time being appear to have precluded appeals for inadequacy.

Actually the distinction is without material difference, if it has any application to this case. Whereas public utilities have to apply for rate increases that are based upon past history and certain prognostications, which increases are not necessarily granted in whole or in part, the nursing homes are annually given, without applying for it, advance rate consideration and the setting of a rate for the following year that includes past history and a prognostication of the likely cost increases based on a comparative area formula the State Health Department has used (without complaint by the Respondents). In neither the case of the utilities nor the nursing homes do exact costs form the basis for the rate increases nor are exact costs necessarily recovered when the new or increased rates are applied.

The complaint that Respondents have with the 1976 interim rate is that apparently they may not get the "bonus" of the four or five previous years when the State Health Department was allowing appeals for, and granting, an additional increment over the increase (inflation trend) factor to allow for a catch-up of nursing home employee wages in comparison with other employees in the health services field. Nevertheless, the state legislature has by law assured the nursing homes that they will get a final 1976 rate that adjusts increased costs, including labor costs, on a reasonable basis. And the State Health Department has indicated that in general it will follow its previous practice of computing the composite inflation trend factor that provides for the increase over past costs, but probably without the special catch-up increment, the need for which the Health Department believes has ended. So that, except for the delay, and the elimination, as such, of the wage catch-up increment (which Respondents could not expect to be permanent), Respondents are or will shortly be, in about the same financial position respecting rate reimbursement for 1976 and the usual rate making procedure of the past, rather than the dire financial straits depicted.

The formal differences in style of ratemaking applicable to Respondents do not serve to distinguish them, under the Act, from other regulated businesses that are under the Act and under the requirements of Section 8(d). As in other regulated businesses, Respondents knew that make-whole rates are not guaranteed, that there are risks of not being made whole by the rates that are allowed, and that nevertheless they must render the services to the public for which they are licensed. With this awareness Respondents were willing to assume the risk in their contracts with the Union of being obliged to pay increases in wages and benefits to the employees that might not necessarily be totally allowed in the State Health Department reimbursement rates for Medicaid. In the circumstances, Respondents cannot now complain of the Board's requiring them to pay what they agreed upon, Washington Employers, Inc., 200 NLRB 825, 827 (1972).

Perhaps finally dispositive of the argument for special privilege or waiver for nursing homes under Section 8(d) of the Act, and the collective bargaining obligations it imposes, is the law that brought the nursing homes under coverage of the Act -- P.L. 93-360, approved July 26, 1974.

To the extent that Section 8 and 8(d) were amended by the new law and other provisions added, the thrust was to tighten notice and other provisions to encourage avoidance of strikes and increased use of mediation and conciliation. Nowhere in the law is there any relaxation of or exemption from, the collective bargaining obligations. Moreover the intent of the Congress not to imply any was specifically stated in the Congressional debate preceding enactment of the law. Senator Harrison Williams, chairman of the Senate Committee in charge of the legislation, said:

"This legislation is a product of compromise, and the National Labor Relations Board in administering the act should understand specifically that this committee understood the issues confronting it, and went as far as it decided to go and no further and the Labor Board should use extreme caution not to read into this Act by implication -- or general logical reasoning -- something that is not contained in the bill, its report and the explanation thereof." 120 Cong. Record S12104, July 10, 1974. 10/

Respondents' defenses are without merit.

10/ And see, Affiliated Hospitals v. Searce, F.2d , 93 LRRM 2307 (U.S.D.C.N.D. Cal., 1976), applying strict construction to one of the provisions of the new law.

Section 8(a)(5) and (1) Findings

Respondents' formal notices to the Union, between December 15 and 24, 1975, that they would not honor, and their subsequent failure and refusal to honor, the 1976 wage and benefit increases under their contracts was a unilateral midterm modification of the contracts without Union consent and over Union objection, and was a repudiation by Respondents of their obligation to continue the contracts in full force and effect until expiration, within the meaning of Section 8(d). The refusal to honor the contract provisions cannot be equated with a simple default on an accrued payment due, but was a denunciation of the increases extending into the future of the contracts. Washington Refrigeration Service Co., 206 NLRB 852, 857 (1973). Such repudiation of the collective bargaining obligation was a violation of Section 8(a)(5) and (1) of the Act, for which a remedy should be provided by the Board.

Conclusions of Law

1. By refusing to honor and by repudiating the wage and benefits increases due employees commencing January 1, 1976, under collective bargaining contracts with the Union, Respondents have unilaterally and without consent of the Union modified the contracts in midterm, in derogation of Respondents' bargaining obligations under Section 8(d) of the Act, thereby engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

2. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

It will be recommended that the Respondents

(1) cease and desist from their unfair labor practices;

(2) honor, and give retroactive effect from January 1, 1976 to, the terms and conditions of their collective bargaining contracts with the Union, including but not limited to the provisions relating to the increases of wages and other benefits, and make their employees whole for losses suffered by reason of the failure to honor and apply the provisions of the contracts, with interest at six percent per annum as provided in Isis Plumbing and Heating Co., 138 NLRB 716 (1962), approved in Philip Carey Mfg. Co. v. N.L.R.B., 331 F.2d 720 (C.A. 6, 1964), cert. denied 379 U.S. 888;

(3) post the notices provided for herein; and

because the Respondents violated fundamental employee rights guaranteed by Section 7 of the Act, and because there appears from the manner of the commission of this conduct an attitude of opposition to the purposes of the Act and a proclivity to commit other unfair labor practices, it will be further recommended that the Respondents

(4) cease and desist from in any manner infringing upon the rights guaranteed by Section 7 of the Act. N.L.R.B. v. Entwistle Mfg. Co., 120 F.2d 532, 536 (C.A. 4, 1941); P.R. Mallory and Co. v. N.L.R.B., 400 F.2d 956, 959-960 (C.A. 7, 1968), cert. denied 394 U.S. 918; N.L.R.B. v. Bama Company, 353 F.2d 323-324 (C.A. 5, 1965).

In its brief, the Union requested that the allowance of attorney's fees and litigation expenses, incurred by it, be included in the remedy.

Counsel fees may be allowed where the Respondent in a case engages in frivolous litigation, Tiidee Products, Inc., 194 NLRB 1234, 1236 (1972). However, because a defense is found to be without merit it is not necessarily frivolous, Heck's Inc., 191 NLRB 886, 889 (1971). In balancing conflicting interests, the Board may properly refrain from assessing litigation costs where the Respondent has asserted debatable defenses found to be without merit, N.L.R.B. v. Food Store Employees Union Local 347, 417 U.S. 1, 8-9 (1974). And, where the rejected defenses were debatable rather than frivolous, the Board has held it will not assess litigation costs and fees against the Respondent, Hecks, Inc., 215 NLRB No. 142 (1974); Amsterdam Printing and Litho Corp., 223 NLRB No. 66, slip op. p. 8, n. 10 (1976).

I have found Respondents' defenses to be without merit, but in my view they were debatable, and not frivolous, defenses. Accordingly I will not order payment by Respondents of litigation expenses and attorney's fees to the Union.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, there is hereby issued the following recommended: 11/

ORDER

Respondents, its officers, agents, successors, and assigns shall:

11/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

5 (a) Unilaterally, and without consent of the Union, failing and refusing to pay or provide increases in wages and other benefits due employees under Respondents' collective bargaining contracts with the Union or otherwise modifying the provisions of such contracts during the term of the contracts.

10 (b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

15

(a) Honor, and give retroactive effect from January 1, 1976 to, the terms and conditions of their collective bargaining contracts with the Union, including but not limited to the provisions relating to the increases of wages and other benefits, and make their employees whole in the manner set forth in the section of the decision entitled "The Remedy" for the losses in pay or other benefits incurred by each employee as a result of Respondents' failure to honor and apply the provisions of the contracts.

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(b) Preserve, and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to ascertain the backpay and other redress due under the terms of this order.

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(c) Post in each of the nursing homes and health related facilities copies of the attached notice marked "Appendix." ^{12/} Immediately upon receipt of said notice, on forms to be provided by the Regional Director for Region 29 (Brooklyn, New York), the Respondents shall, respectively, cause the copies to be signed by one of its authorized representatives and posted, the posted copies to be maintained for a period of sixty consecutive days thereafter in conspicuous places, including

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12/ In the event that the Board's order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within twenty days from the date of this order, what steps the Respondents have taken to comply herewith.

Dated at Washington, D. C.

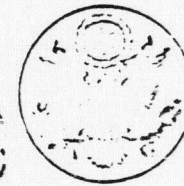
November 18, 1976

Hefzel H.E. Plaine

Hefzel H.E. Plaine
Administrative Law Judge

FORM NLRB-4727
(9-65)

NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A TRIAL, THAT
WE VIOLATED THE NATIONAL LABOR RELATIONS ACT:

WE WILL NOT, unilaterally and without consent of the Union,
fail and refuse to pay or provide increases in wages and
other benefits due you under our collective bargaining
contracts with the Union or otherwise modify the provisions
of such contracts during the term of the contracts.

WE WILL NOT in any other manner, interfere with, restrain,
or coerce you in the exercise of your rights under Section 7
of the National Labor Relations Act.

BECAUSE the Board found that we unlawfully failed and refused
to pay or provide increases in wages and other benefits due
you under the provisions of our contracts with the Union since
January 1, 1976,

WE WILL honor, and give retroactive effect from January 1, 1976
to, the terms and conditions of our contracts, including but not
limited to the provisions relating to the increases in wages
and other benefits, and we will give each of you the lost
backpay and other benefits with interest.

NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC.
and its members:

BAYVIEW NURSING HOME,
CENTRAL ISLAND NURSING HOME,
COMMUNITY DRIVE NURSING HOME,
DALEVVIEW NURSING HOME,
FIVE TOWNS NURSING HOME,
FIVE TOWNS HEALTH RELATED FACILITY,
FRANKLIN PARK NURSING HOME,
GLENCAIRIFF NURSING HOME,
GRANDELL NURSING HOME,
LONG ISLAND TIDES NURSING HOME,
MAYFAIR NURSING HOME,
NASSAU NURSING HOME,
PARKVIEW NURSING HOME,
RIVERHEAD NURSING HOME,
ROCKVILLE NURSING HOME,
SOUTH SHORE NURSING HOME.

and
ST. JAMES NURSING HOME
ST. JAMES PLAZA
HUNTINGTON NURSING HOME
HUDSON VIEW MANOR
HUDSON VIEW NURSING HOME
CARILLON HOUSE NURSING HOME AND
H.R.F.

(Employers)

Dated _____ By _____ (Representative) _____ (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced,
or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed
to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241

Telephone (212) 626-7700.

227 NLRB No. 249

JPW

D-2079
New York, N.Y.

Incc. 5...

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NASSAU COUNTY HEALTH FACILITIES ASSOCIATION,
INC. AND ITS MEMBERS: BAYVIEW NURSING HOME,
CENTRAL ISLAND NURSING HOME,
COMMUNITY DRIVE NURSING HOME,
DALEVIEW NURSING HOME,
FIVE TOWNS NURSING HOME,
FIVE TOWNS HEALTH RELATED FACILITY,
FRANKLIN PARK NURSING HOME,
GLENARIFF NURSING HOME,
GRANDELL NURSING HOME,
LONG ISLAND TIDES NURSING HOME,
MAYFAIR NURSING HOME,
NASSAU NURSING HOME,
PARKVIEW NURSING HOME,
RIVERHEAD NURSING HOME,
ROCKVILLE NURSING HOME,
SOUTH SHORE NURSING HOME

Case 29--CA--4797

ST. JAMES NURSING HOME

Case 29--CA--4798

ST. JAMES PLAZA

Case 29--CA--4799

HUNTINGTON NURSING HOME

Case 29--CA--4800

HUDSON VIEW MANOR

Case 29--CA--4801

HUDSON VIEW NURSING HOME

Case 29--CA--4802

CARILLON HOUSE AND H.R.F.

Case 29--CA--4803

and

LOCAL 1115, JOINT BOARD NURSING HOME
AND HOSPITAL EMPLOYEES DIVISION

227 NLRB No. 249

DECISION AND ORDER

On November 18, 1976, Administrative Law Judge Herzog H.E. Flaine issued the attached Decision in this proceeding. Thereafter, exceptions and supporting briefs were separately filed by: Respondents Nassau County Health Facilities Association, Inc. and its members and Huntington Nursing Home and Carillon House and H.R.F.; Respondents Hudson View Manor and Hudson View Home; and Respondents St. James Nursing Home and St. James Plaza. The Charging Party filed cross-exceptions and a memorandum in support.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions, cross-exceptions, and supporting briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Nassau County Health Facilities Association, Inc. and its members, St. James Nursing Home, St. James Plaza, Huntington Nursing Home, Hudson View Manor, Hudson View

D-2079

Nursing Home, and Carillon House and H.R.F., New York, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. January 28, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

AGREEMENT

BETWEEN



AND

Firm Name _____

Corporate Name _____

Address _____

Employer _____ Telephone _____

Contract Signed

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Month Day Year

Reopening Date

--	--	--

Month Day Year

Termination Date

--	--	--

Month Day Year

Adjustment
Dates

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Month Day Year

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Month Day Year

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Month Day Year

Adjustment
Dates

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Month Day Year

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Month Day Year

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Month Day Year

A G R E E M E N T

Agreement entered into this 9th day of January, 1975, by and between REGISTERED NURSES GUILD OF LOCAL 1115 JOINT BOARD NURSING HOME AND HOSPITAL EMPLOYEES DIVISION, Hereinafter referred to as the "UNION", having its principal office in the State of New York, and NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC., located at 1450 Broadway, N.Y., N.Y. 10018, hereinafter referred to as the "ASSOCIATION", for and on behalf of those present and future members of the Association who individually authorize the Association to act as their bargaining agent, each of which is referred to as an "EMPLOYER".

W I T N E S S E T H

WHEREAS, the Union has been designated by a majority of the employees of the Employer in the bargaining unit as their sole collective bargaining agent with respect to wages, hours and other conditions of employment; and

WHEREAS, it is recognized that the efficient and orderly method of establishing and maintaining peaceful and harmonious labor relations and of dealing with problems and controversies arising out of employment is through negotiations and agreement, rather than through strikes and lockouts;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. BARGAINING UNIT:

A. The Employer recognizes the Union as the sole and exclusive bargaining agent for all of its registered nurses, excluding only the Director of Nursing and Assistant Director of Nursing. In the event any dispute arises as to whether or not an employee does, in fact, come within one of the excluded categories above mentioned, such dispute shall be submitted to arbitration for settlement and determination in the manner hereinafter provided. No supervisor shall perform bargaining unit work except for purposes of instruction or in any emergency.

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B. Any additional classifications not presently covered shall become part of this Agreement when the Union represents a majority within such classifications and shall be subject to separate negotiations between the parties. The result of such negotiations shall be attached as an appendix to this Agreement. The parties agree that the determination of whether the Union does in fact represent a majority shall be determined in accordance with the arbitration procedures of this Agreement.

2. UNION SHOP:

A. It shall be a condition of employment that all employees of the Employer covered by this agreement who are members in good standing on the execution or effective date of this agreement, whichever is later, shall remain members in good standing and those who are not members on the execution or

7

effective date of this agreement, whichever is later, shall on the thirtieth (30) day following the execution or effective date of this agreement, whichever is later, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution or effective date, whichever is later, shall on the thirtieth (30th) day following the beginning of such employment become and remain members in good standing in the Union. Upon notice by the Union to the Employer that an employee has not complied with the Union shop requirements, the Employer shall forthwith discharge said employee and advise the Union thereof in writing of its' action taken. The Employer shall promptly, upon hiring new employees, notify them of the existence of the Union Agreement and the union shop provisions thereof.

B. No employee employed beyond thirty (30) days shall be discharged without the prior written consent of the Union. If the Union shall not consent to said discharge, the matter shall be submitted to arbitration as provided herein. Prior written consent of the Union shall not be required when discharged for just cause.

C. The Employer shall forthwith give the Union a list containing the names and home addresses of employees covered by this Agreement, their categories, wages and dates of hire, and shall thereafter promptly furnish from time to time the names, home addresses, dates of hire, categories, and wages, of all new employees in the bargaining unit.

7. NO STRIKE - NO LOCKOUT:

During the term of this agreement, the Union shall not call or authorize any strike against the Employer at the establishment covered by this Agreement and the Employer shall not effect any lockouts. Should an employee or employees engage in any strike, and should the Employer notify the Union of such action, a Representative of the Union shall, as promptly as possible, instruct such employees to forthwith cease such action and promptly return to their respective jobs and comply with the applicable provisions of this Agreement.

The Employer agrees that in consideration of the performance by the Union as set forth above, with respect to any strike which is contrary to the provisions of this section, there shall be no liability for damages on the part of the Union, its

officers, agents, or members for breach of contract, by suit or otherwise.

8. GRIEVANCE AND ARBITRATION PROCEDURE:

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10. WAGE INCREASE AND MINIMUM RATE:

A. Wages shall be as contained in

Schedule "A".

B. Nothing herein contained shall prevent the Employer from giving merit increases, bonuses, or other similar payments provided they have been first negotiated with the Union.

C. Certain minimum wage scales are set forth in Schedule "A" and made a part hereof. Employees shall receive either the across the board increases or the applicable minimum rates, if any, whichever is the greater. Employees performing work of a higher classification, should receive the rate for the higher classification, unless they are filling in on an emergency or temporary basis.

D. Wages are to be paid in case each every week and accompanying all pay shall be an itemized list of deductions. However, where mutually agreed upon between the Union and the Employer, payment can be made by check.

E. Evening and night shift employees shall receive a shift differential of 10% which shall be included in determining all benefits due to employees.

F. A registered nurse, who works two floors, shall receive time and one-half the minimum rate as set forth in Schedule A, or the employee's prevailing rate, whichever is greater.

G. A registered nurse, who is in charge of the House shall receive four (\$4.00) Dollars per day above the minimum

rate set forth in Schedule A, or the employee's prevailing rate, whichever is greater, for each day the employee is in charge of the house.

K. Government Controls.

If the Federal Government institutes wage controls in any form and any portion of this collective bargaining agreement is deferred or cut back, the parties shall meet promptly to attempt to allocate the monetary equivalent of the disapproved wages or benefits in a manner that would result in government approval.

If the monetary equivalent of the deferred or cutback portion cannot be re-allocated, the Employer will periodically, as the prescribed payments required by the collective bargaining agreement become due, place in escrow an amount of money equal to that necessary to provide the wages and benefits deferred or cutback only if the Funds so escrowed are reimbursed to the Employer and if funding such escrow is approved in writing by Government Agency's having jurisdiction. The Employer will pay the amount directly attributable to the deferment or cutback to the affected employees when legally permissible, subject to the Employer being re-imbursed by the applicable Government Agency.

the contractor.

21. BENEFIT FUNDS:

A. LOCAL 1115 EMPLOYEES UNION
WELFARE TRUST FUND

Effective July 1, 1975 the Employer shall pay to Local 1115 Employees Union Welfare Trust Fund (hereinafter called the "Fund") the sum of \$50.00 per month (and effective the beginning of the second year of the contract \$60.00 and effective the beginning of the third year of the contract \$70.00) for each employee covered by this Agreement employed at least thirty (30) days. The Fund shall provide, for the covered employees, and their families and dependents, such benefits as the Trustees of the Fund shall from time to time decide upon. Since the Fund does not provide disability benefits coverage, the Employer is to provide, maintain and pay for the full Disability Benefits Coverage.

B. 1115 PREPAID LEGAL SERVICE CARE

Effective January 1, 1975 the Employer shall pay to 1115 Prepaid Legal Service Care (hereinafter called the "Legal Service Fund") the sum of \$7.00 per month, (and effective the beginning of the second year of the contract \$11.00, and effective the beginning of the third year of the contract \$15.00) for each employee covered by this Agreement employed, at least thirty (30) days. Contributions to this Legal Service Fund shall not constitute or be deemed as wages due to the employees. The parties to this Agreement hereby designate, adopt and approve

28. DURATION:

34
A. THIS AGREEMENT shall become effective from January 1, 1975 and shall remain operative and binding upon the parties hereto, their heirs, successors, assigns, administrators, concessionaires, and others, and shall apply to all present and future establishments for a period of four (4) years. If, for any reason, the Employer shall change its name or status, or the Union shall change its name, affiliation or status, it is agreed that such changes shall in no manner modify or affect the binding obligations of this agreements. The Union shall have the right of 90 days prior to the expiration of the third year to reopen and negotiate wages (minimum and across the board increases), hours and general terms and conditions to be effective for the fourth (4th) year of this agreement. In the event that the parties fail to agree, the matter shall be submitted to arbitration as herein set forth and the award shall be final and binding.

B. This agreement shall be automatically renewed for an additional period of four (4) years unless either party notifies the other in writing, by Certified Mail, Return Receipt Requested, of its intention not to renew, not less than ninety (90) days, and not more than one hundred five (105) days prior to the expiration of the agreement. In the event that the agreement is automatically renewed, then at the option of the Union, the parties shall renegotiate yearly such wages, hours and general terms and conditions of employment as the Union requests. If the parties fail to agree, such matters shall be submitted to arbitration as herein set forth. The award of the arbitrator shall be binding and final.

C. This agreement shall not be changed, altered, modified or amended, unless in writing, and signed by the authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year above written.

REGISTERED NURSES GUILD OF LOCAL
1115 JOINT BOARD NURSING HOME
AND HOSPITAL EMPLOYEES DIVISION

BY /s/ ALEX DE LAURENTIS
Authorized Signature

NASSAU COUNTY HEALTH
FACILITIES ASSOCIATION, INC.

BY /s/ BURTELL CUTLER
Authorized Signature

SCHEDULE "A"

WAGE INCREASES:

A. All employees will receive the increases below on the dates listed, or the minimum, whichever is greater.

B.1. Employees shall receive a Ten Dollar (\$10.00) per week increase 30 days after the date of hire, irrespective of the hiring rate.

B.2. All employees shall receive wage increases as follows:

Effective 1/1/75 \$15.00 per week

Effective 7/1/75 \$8.00 per week

Effective 1/1/76 \$9.00 per week

Effective 7/1/76 \$8.00 per week

Effective 1/1/77 \$9.00 per week

Effective 7/1/77 \$8.00 per week

C. MINIMUM HIRING RATE AND CLASSIFICATION

(Based on 37½ hours per week)

Registered Nurses
Minimum Wage

Effective 1/1/75 \$262.00

Effective 7/1/75 \$270.00

Effective 1/1/76 \$279.00

Effective 7/1/76 \$287.00

Effective 1/1/77 \$296.00

Effective 7/1/77 \$304.00

D. Minimum wages shall at all times be \$10.00 per week over and above the highest minimum wage set forth in federal, state, city or local statutory minimum wages.

E. Probationary employees for the first 30 days may be paid Ten (\$10.00) Dollars per week less than the minimum hiring rate.

F. Cost of Living Clause:

It is hereby agreed that the cost of living index (B.L.S. Metropolitan New York Index) shall be the basis for all cost of living calculations. If this index shall increase by more than 8%, an additional \$1.00 a week wage increase for all categories. This adjustment shall be as of January 1, 1976 and January 1, 1977 and shall be paid retroactively to the above dates upon publication of the indices; payable by second payroll week following publication of final index.

G. Employees after three (3) years of employment in the establishment shall receive a length of service increase of \$3.00 per week; and an additional \$3.00

per week for each additional three (3)
years of service in the establishment.

REGISTERED NURSES GUILD OF LOCAL
1115 JOINT BOARD NURSING HOME
AND HOSPITAL EMPLOYEES DIVISION

BY /s/ ALEX DE LAURENTIS
Authorized Signature

NASSAU COUNTY HEALTH
FACILITIES ASSOCIATION, INC.

BY /s/ BURTELL CUTLER
Authorized Signature

WITNESS _____



Telegram

NO WDS - CL OF SVC	PD OR COLL	CASH NO.	CHARGE TO THE ACCOUNT OF	☐ OVER NIGHT TELEGRAM UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM
			SOLOMON, ROSENBAUM & GOODMAN	

Send the following message, subject to the terms on back hereof, which are hereby agreed to

TO MR. ALEX DELAURENTIS
LOCAL 1115 JOINT BOARD, NURSING HOME &
STREET & NO. HOSPITAL EMPLOYEES DIVISION
126 UNIVERSITY PLACE
CITY & STATE NEW YORK, NEW YORK 10003

DECEMBER 15, 1975
CARE OF OR APT. NO.
TELEPHONE
ZIP CODE

AT AN EMERGENCY MEETING OF THIS ASSOCIATION HELD ON DECEMBER 14, 1975, THE MEMBERS OF THE ASSOCIATION WHO ARE COVERED BY THE COLLECTIVE BARGAINING AGREEMENT WITH LOCAL 1115, VOTED UNANIMOUSLY TO WITHHOLD THE WAGE INCREASE DUE JANUARY 1, 1976 UNDER THE COLLECTIVE BARGAINING AGREEMENT, THE COST OF LIVING ADJUSTMENT DUE THE SAME DATE, THE INCREASE IN CONTRIBUTION TO THE WELFARE FUND, THE INCREASE IN CONTRIBUTION TO THE PREPAID LEGAL SERVICE FUND AND THE INCREASE IN SICK LEAVE. THE ACTION OF THE MEMBERS OF THE ASSOCIATION WAS PROMPTED BY THE FREEZE IN MEDICAID RATES WHICH MAKES IT IMPOSSIBLE FOR THE HOMES AND HEALTH RELATED FACILITIES COVERED BY THE AGREEMENT TO PAY THE WAGE INCREASES AND OTHER BENEFITS PROVIDED UNDER THE COLLECTIVE BARGAINING AGREEMENT.

BURTELL CUTLER, PRESIDENT
NASSAU COUNTY HEALTH
FACILITIES ASSOCIATION, INC.

SENDER'S TEL NO. 212-564-0150 NAME & ADDRESS SOLOMON, ROSENBAUM & GOODMAN
1450 BROADWAY, NEW YORK, N.Y. 10018

WU 1207 (R 5-69)

MC # 9 ~~for~~ me
6-22-76
PC



HGMNYBT HSB
2-035111E353 12/19/75
103 1PMHTZZ CSP

 Maigram®
western union



5162716060 HGM TDMT HUNTINGTON NY 119 12-19 0241P EST

38

MR DILAURENTIS
LOCAL 1115 126 UNIVERSITY PL
NEW YORK NY 10003

AN EMERGENCY MEETING WAS HELD BY THE GOVERNING BODY OF THE HUNTINGTON NURSING HOME ON 12-17-75. THE HUNTINGTON NURSING HOME WHO IS COVERED BY THE BARGAINING AGREEMENT WITH LOCAL 1115 IS UNABLE TO PAY WAGE INCREASES DUE 1-1-76 UNDER THE COLLECTIVE BARGAINING AGREEMENT, THE COST OF LIVING ADJUSTMENT DUE THE SAME DATE, THE INCREASE IN THE CONTRIBUTIONS TO THE WELFARE FUND, INCREASE IN CONTRIBUTIONS TO THE PREPAID LEGAL FUND AND INCREASE IN SICK LEAVE AND HOLIDAY TIME, THE ACTION OF THE NURSING HOME WAS PROMPTED BY THE FREEZE IN MEDICAID RATES WHICH MAKES IT IMPOSSIBLE FOR THE HOME COVERED BY THE AGREEMENT TO PAY THE WAGE INCREASES AND OTHER BENEFITS PROVIDED UNDER THE COLLECTIVE BARGAINING AGREEMENT

HUNTINGTON NURSING HOME
GLADYS SARNO
WOODHULL AND NASSAU RDS
HUNTINGTON NY 11743

14:42 EST

HGMNYBT HSB

AC 1101 mcl
6-22-76
R

MGHNYST HSB
2-054549E351 12/17/75
TCR IPMTZZ CSP

Mailgram
western union



5152715800 MGH TDMT HUNTINGTON NY 114 12-17 0611P EST

39

LOCAL 1115 NURSING HOME AND HOSPITAL
EMPLOYEES DIVISION
126 UNIVERSITY PL
NEW YORK NY 10003

YOU ARE HEREBY NOTIFIED THAT CARILLON HOUSE NURSING HOME 830 PARK AVENUE HUNTINGTON NEW YORK WILL WITHHOLD THE WAGE INCREASE DUE JANUARY 1 1976 UNDER THE COLLECTIVE BARGAINING AGREEMENT, THE COST OF LIVING ADJUSTMENT DUE THE SAME DATE, THE INCREASE OF CONTRIBUTIONS TO THE WELFARE FUND, THE INCREASE IN CONTRIBUTIONS TO THE PREPAID LEGAL SERVICE FUND AND THE INCREASE IN SICK LEAVE. THIS DECISION WAS PROMPTED BY THE FREEZE OF MEDICAIDE RATES WHICH MAKES IT IMPOSSIBLE FOR CARILLON HOUSE NURSING HOME TO PAY THE WAGE INCREASES AND THE BENEFITS PRESCRIBED UNDER THE COLLECTIVE BARGAINING AGREEMENT

FERDINAND J CARILLO, OPERATOR

18:11 EST

MGHNYST HSB

Handwritten notes:
JC 4/11/76
6-22-76
ML

40
rec'd
12/24/75

HUDSON VIEW NURSING HOME, INC.
65 ASHBURTON AVE.
YONKERS, N. Y. 10701
(914) 963-4000

December 24, 1975

Mr. Alex DeLaurentis
Local 1115
126 University Place
New York, N. Y. 10003

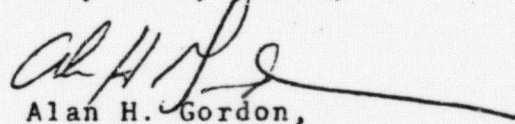
Dear Mr. DeLaurentis:

This is to advise you that Hudson View Nursing Home, Inc. and Hudson View Manor, Inc., will financially be unable to grant any of the increases due on January 1, 1976 (payroll, legal fund, welfare fund), as called for in our current agreement.

This is not a situation that we enjoy being put in; however, economic determinations by the State of New York, namely freezing our reimbursement rate at 1975 level, have left us no other course of action. We appreciate the Union's position, and hope that you understand our position.

Enclosed is a copy of a notice that we will be posting on the bulletin board.

Very truly yours,


Alan H. Gordon,
Controller

AHG/up

rec'd
12/24/75
6-22-76
PL

HUDSON VIEW NURSING HOME, INC.

65 ASHBURTON AVE.

YONKERS, N. Y. 10701

(914) 963-4000

December 29, 1975

To The Employees of Hudson View:

As you know, the financial situation has been threatening bankruptcy for our State and local government.

Up until now, we have been able to continue our operations undisturbed through the crisis. However, operating expenses have continued to rise through 1975, and the State Department has notified us that our rate of reimbursement for 1976, will be the same as 1975, and we will not be receiving our usual and anticipated rate increase. Therefore, in order to maintain patient care, along with our financial obligations, we cannot pay the January 1976 wage increases. Any increase in expenses, especially in payroll, would force us to reduce staff accordingly.

We can readily understand your disappointment, along with ours, as to the State's action, but without a rate increase from Albany, we have no other course of action, than the above.

It is hoped that, as in the past, we will receive your understanding and patience of the situation. You can rest assured we have been, and will continue to leave no stone unturned, in order to secure fair and adequate reimbursement from the State of New York.



Bernard I. Sandford

BIS/up

42

ST. JAMES PLAZA
273 MORICHES ROAD
ST. JAMES, NEW YORK 11780

ANTON NOTEY, M.D.
EXECUTIVE DIRECTOR

THOMAS NOTEY
ADMINISTRATOR

HC 13 ~~13~~ 6-22-76 ll

December 16, 1975

Mr. Alex De Laurentis
Secretary/Treasurer
Local 1115
126 University Place
New York, New York 10003

Dear Mr. De Laurentis:

As you are aware because of our conversations and of your dialogue with the attorneys of Nassau County Health Facilities Association, the State of New York has refused to recognize and reimburse to us the cost of the increases given and due to our employees as per our collective bargaining agreement.

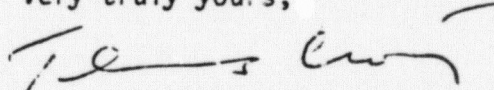
The attached letter is being distributed to all our employees in an effort to keep them informed of our situation and explain our view.

This is not intended to interfere with your position as the representative of our employees and their bargaining agent.

We are in no way trying to make any separate deals with anyone and do respect your position as their recognized agent.

It is hoped that the situation will be resolved favorably to all. We are making every effort to expedite a change in the State determination through all channels available to us. We are hopeful that you will understand the situation, and, that you will cooperate and communicate with us as necessary.

Very truly yours,



THOMAS NOTEY
ASSISTANT EXECUTIVE DIRECTOR

TN:hn
Enc.

43

December 16, 1975

Dear Employee:

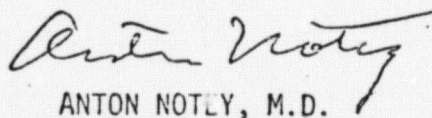
Regretfully it is necessary at this time to inform you that it is impossible to pay the January 1, 1976 raises, due to the failure of the New York State Department of Health to recognize and reimburse us for the union contract increases.

Because of this action by the State, we are also unable to meet the increased contribution to your welfare and legal fund.

We are certain that you, our employees, will bear with us during this period of crisis, as you patiently did in the past. We must take this action in order to insure the survival of our facility and preservation of your job.

When the State Department of Health makes the necessary adjustments in our rate we will once again honor our obligation to you and your union.

Sincerely,



ANTON NOTLY, M.D.
EXECUTIVE DIRECTOR

AN:hn



44
Saint James NURSING HOME

275 MORICHES ROAD, ST. JAMES, N.Y. 11780
(516) 862-8000

Mc -14
6-21-76
Mc

ANTON NOTEY, M.D.
EXECUTIVE DIRECTOR

LORETTA CABRAL, R.N.
ADMINISTRATOR

December 16, 1975

Mr. Alex De Laurentis
Secretary/Treasurer
Local 1115
126 University Place
New York, New York 10003

Dear Mr. De Laurentis:

As you are aware because of our conversations and of your dialogue with the attorneys of Nassau County Health Facilities Association, the State of New York has refused to recognize and reimburse to us the cost of the increases given and due to our employees as per our collective bargaining agreement.

The attached letter is being distributed to all our employees in an effort to keep them informed of our situation and explain our view.

This is not intended to interfere with your position as the representative of our employees and their bargaining agent.

We are in no way trying to make any separate deals with anyone and do respect your position as their recognized agent.

It is hoped that the situation will be resolved favorably to all. We are making every effort to expedite a change in the State determination through all channels available to us. We are hopeful that you will understand the situation, and, that you will cooperate and communicate with us as necessary.

Very truly yours,

MS. LORETTA CABRAL

LC:hn
Enc.

December 16, 1975

Dear Employee:

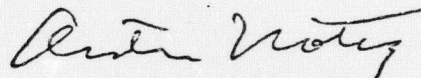
Regretfully it is necessary at this time to inform you that it is impossible to pay the January 1, 1976 raises, due to the failure of the New York State Department of Health to recognize and reimburse us for the union contract increases.

Because of this action by the State, we are also unable to meet the increased contribution to your welfare and legal fund.

We are certain that you, our employees, will bear with us during this period of crisis, as you patiently did in the past. We must take this action in order to insure the survival of our facility and preservation of your job.

When the State Department of Health makes the necessary adjustments in our rate we will once again honor our obligation to you and your union.

Sincerely,



ANTON NOTEY, M.D.
EXECUTIVE DIRECTOR

AN:hn

46

CENTRAL ISLAND NURSING HOME
825 OLD COUNTRY ROAD
PLAINVIEW, N. Y. 11803

GE 3-0600

ANTON NOTEY, M.D.
MEDICAL DIRECTOR
RICHARD A. NOTEY
ADMINISTRATOR

id
NC # 15
6-22-76
cc

December 16, 1975

Mr. Alex De Laurentis
Secretary/Treasurer
Local 1115
126 University Place
New York, New York 10003

Dear Mr. De Laurentis:

As you are aware because of our conversations and of your dialogue with the attorneys of Nassau County Health Facilities Association, the State of New York has refused to recognize and reimburse to us the cost of the increases given and due to our employees as per our collective bargaining agreement.

The attached letter is being distributed to all our employees in an effort to keep them informed of our situation and explain our view.

This is not intended to interfere with your position as the representative of our employees and their bargaining agent.

We are in no way trying to make any separate deals with anyone and do respect your position as their recognized agent.

It is hoped that the situation will be resolved favorably to all. We are making every effort to expedite a change in the State determination through all channels available to us. We are hopeful that you will understand the situation, and, that you will cooperate and communicate with us as necessary.

Very truly yours,

Richard A. Notey

RICHARD NOTEY
ADMINISTRATOR

RN:hn

47

December 16, 1975

Dear Employee:

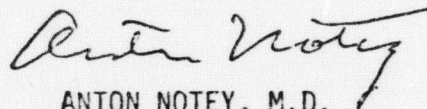
Regretfully it is necessary at this time to inform you that it is impossible to pay the January 1, 1976 raises, due to the failure of the New York State Department of Health to recognize and reimburse us for the union contract increases.

Because of this action by the State, we are also unable to meet the increased contribution to your welfare and legal fund.

We are certain that you, our employees, will bear with us during this period of crisis, as you patiently did in the past. We must take this action in order to insure the survival of our facility and preservation of your job.

When the State Department of Health makes the necessary adjustments in our rate we will once again honor our obligation to you and your union.

Sincerely,



ANTON NOTEY, M.D.
EXECUTIVE DIRECTOR

AN:hn

48

South Shore Nursing Home

275 WEST MERRICK ROAD
FREEPORT, NEW YORK 11520
(516) 623-4000

EC 16 ~~16~~
6-22-76
H

DR. ANTON NOTEY
MEDICAL DIRECTOR

MR. THOMAS NOTEY
ADMINISTRATOR

December 16, 1975

Mr. Alex De Laurentis
Secretary/Treasurer
Local 1115
126 University Place
New York, New York 10003

Dear Mr. De Laurentis:

As you are aware because of our conversations and of your dialogue with the attorneys of Nassau County Health Facilities Association, the State of New York has refused to recognize and reimburse to us the cost of the increases given and due to our employees as per our collective bargaining agreement.

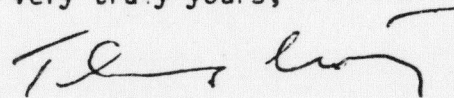
The attached letter is being distributed to all our employees in an effort to keep them informed of our situation and explain our view.

This is not intended to interfere with your position as the representative of our employees and their bargaining agent.

We are in no way trying to make any separate deals with anyone and do respect your position as their recognized agent.

It is hoped that the situation will be resolved favorably to all. We are making every effort to expedite a change in the State determination through all channels available to us. We are hopeful that you will understand the situation, and, that you will cooperate and communicate with us as necessary.

Very truly yours,



THOMAS NOTEY
ADMINISTRATOR

TN:hn
Enc.

49
B

December 16, 1975

Dear Employee:

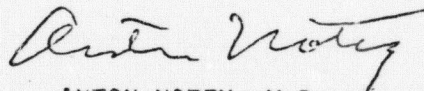
Regretfully it is necessary at this time to inform you that it is impossible to pay the January 1, 1976 raises, due to the failure of the New York State Department of Health to recognize and reimburse us for the union contract increases.

Because of this action by the State, we are also unable to meet the increased contribution to your welfare and legal fund.

We are certain that you, our employees, will bear with us during this period of crisis, as you patiently did in the past. We must take this action in order to insure the survival of our facility and preservation of your job.

When the State Department of Health makes the necessary adjustments in our rate we will once again honor our obligation to you and your union.

Sincerely,



ANTON NOTEY, M.D.
EXECUTIVE DIRECTOR

AN:hn

MEMORANDUM of understanding reached this 18th day of December, 1974, by and between NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC. and LOCAL 1115, JOINT BOARD NURSING HOME & HOSPITAL EMPLOYEES DIVISIONS. This Memorandum encompasses four bargaining units known as Blue Collar, Registered Nurses, Licensed Practical Nurses, Supervisors (who are presently covered under the existing contracts).

The parties agree to accept the contract presented by the Union to the Association covering the above units with modifications agreed to and discussed by Irving Reier, Esq., attorney for the association, and Charles R. Katz, Esq., attorney for the union, and Alex DeLaurentis and Burt Cutler and Hy Juvall via four way conference phone call.

In addition to the above mentioned changes, other changes were agreed to between Messrs. Juvall, DeLaurantis, Sreter and Cutler which will be incorporated or eliminated from the agreement as required.

For all classifications, it has been also agreed that a general increase of: \$57.00 over a period of three years consists of:

January 1, 1975	\$15.00	July 1, 1975	\$8.00
January 1, 1976	9.00	July 1, 1976	8.00
January 1, 1977	9.00	July 1, 1977	8.00

HOLIDAYS:	1 additional	1975
	(2-1/2 x)	
	1 additional premium day	1976 (substituting for existing day)
	1 additional premium day (2-1/2)	1977 (sub. for existing day)

*Rx 6 mm
6-23-76
PIL*

SICK LEAVE: one additional 1976
one additional 1977

UNIFORMS: + 50¢ / week

MEALS: + 50¢ / day

PATERNITY: 1 additional day

MARRIAGE: 1 additional day

VACATION: Adjusted as discussed

R.N. reduced to 8 years for 6 weeks vacation

BEREAVEMENT: Spouse/child 5 days

in addition to all others covered for 3 days,
include grandparents, father-in-law and
mother-in-law.

TUITION: Maximum \$25.00 credit reimbursement for each year
up to 12 credits per year
For full time employees employed at least 1 year
paid after satisfactory completion of courses.

SICK PERSONAL DAY

SHOP STEWARDS: All shop stewards shall receive 2 days off with
pay for purpose of attending educational meeting.

MALPRACTICE FOR INDIVIDUAL COVERAGE: Malpractice to be
provided by employer.

Arbitration witnesses to be paid by employer; up to seven witnesses.

Ten employees to be paid for four negotiation sessions by employer;
only straight time rates; no overtime intended as agreed by
attorneys.

Employees agree to pay any lost time for 3 negotiating sessions for present negotiations.

Employer to provide at least one weekend out of three. If possible alternate weekends. No reduction or change for those presently receiving better (past practice prevails).

WELFARE FUND: 1st year effective July 1, 1975 increase \$20.00/month per covered employee for welfare fund.

January 1, 1976 additional \$10.00/month

January 1, 1977 additional \$10.00/month

PREPAID LEGAL: January 1, 1975 \$7.00/month/employee

January 1, 1976 additional \$4.00/month/employee

January 1, 1977 additional \$4.00/month/employee

COST OF LIVING CLAUSE:

It is hereby agreed that the cost of living index (B.L.S. Metropolitan New York Index) shall be basis for all cost of living calculations. If this index shall increase by more than 8% for any yearly period (or 6 month period) (to be decided upon), there shall be granted for each additional 1% over the 8%, an additional \$2.00/week wage for all categories. This adjustment shall be as of January 1, 1976 and January 1, 1977 and shall be paid retroactively to the above dates, upon publication of the indices; payable by second payroll week following publication of final index.

The aforesaid Memorandum which expresses meaning and understanding of both parties shall be committed to

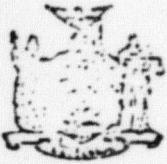
formal agreement on or before Thursday, December 10, 1974.

s/ ALEX DE LAURENTIS

Local 1115 Joint Board, Nursing Home
and Hospital Division

s/BURT CUTLER, Pres.

Nassau County Health Facilities
Ass'n, Inc.



ROBERT P. WHALEN, M.D.
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF HEALTH
—
TOWER BUILDING
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12237

DIVISION OF
HEALTH ECONOMICS

WILLIAM F. MCCANN
ASSISTANT COMMISSIONER

DONALD B. DAVIDOFF
ASSOCIATE DIRECTOR

October 30, 1975

Operator
Mayfair Nursing Home
100 Baldwin Road
Hempstead, New York 11550

Dear Sir:

Medicaid reimbursement rates for services rendered by your facility beginning January 1, 1976 are as follows:

<u>Type of Care</u>	<u>Daily Rate</u>	<u>Monthly Rate</u>
Nursing Home	\$ 43.42	\$ 1,321.00
Health Related Facility		
Sub-chapter H		

Includes prescription drugs	Yes ☐	No ☐	Includes therapy	Yes ☒	No ☐
Includes Physicians' Services	Yes ☐	No ☐	Includes Dental	Yes ☐	No ☐

These rates are inclusive of all services rendered by the facility and, therefore, no additional billing on a fee or other basis should be made. The Commissioners of Social Services throughout the State have been notified by a separate release of these rates. You will use these rates in billing for services rendered beginning January 1, 1976.

The daily Nursing Home and Health Related Facility rate is to be used only in billing for less than a full month of service.

The rates set forth above were developed on an interim basis. New legislation concerning 1976 reimbursement, and still unresolved aspects of Part 86 of the Commissioner's rules have made it impossible to promulgate final health facility rates at this time. Final rates reflecting either upward or downward revisions will be promulgated as soon as possible.

Very truly yours,

William F. McCann
William F. McCann
Assistant Commissioner
Division of Health Economics

*Rx 7 mail
p.n.
R-7*

CHARGE TO: SOLOMON, ROSENBAUM
& GOODMAN

55

JANUARY 12, 1976

TO: LIST OF PEOPLE THIS TELEGRAM IS TO BE SENT TO IS ATTACHED HERETO:

THE FOLLOWING TELEGRAM SENT THIS DAY TO DR. ROBERT WHALEN, COMMISSIONER OF
HEALTH, STATE OF NEW YORK:

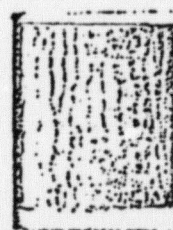
DUE TO THE FREEZE OF MEDICAID REIMBURSEMENT RATES MAKING IT IMPOSSIBLE FOR
THE MEMBERS OF THIS ASSOCIATION TO PAY WAGE INCREASES AND INCREASES IN
PENSION BENEFITS EFFECTIVE JANUARY 1, 1976 WHICH WERE NEGOTIATED IN DECEMBER
1974. WE HAVE ADVISED LOCAL 1115 NURSING HOME AND HOSPITAL EMPLOYEES
DIVISION THAT THE INCREASES COULD NOT BE PAID. THE UNION HAS SENT US
A STRIKE NOTICE ADVISING THAT SIXTEEN MEMBER HOMES AND HEALTH RELATED
FACILITIES OF THIS ASSOCIATION WILL BE STRUCK ON JANUARY 21, 1976. IN
VIEW OF THE DANGER TO THE HEALTH AND SAFETY OF SOME THREE THOUSAND PATIENTS
THE MEMBER HOMES HAVE TODAY DISCONTINUED ADMITTING NEW PATIENTS OR
RESIDENTS AND ARE HEREWITH REQUESTING THE HEALTH DEPARTMENT TO ARRANGE
FOR THE REMOVAL OF ALL PATIENTS AND RESIDENTS IN THE AFFECTED HOMES. THE
HOMES ARE: BAYVIEW NURSING HOME, ISLAND PARK, N. Y., CENTRAL ISLAND
NURSING HOME, PLAINVIEW, N.Y., COMMUNITY DRIVE NURSING HOME, GREAT NECK,
N.Y., DALEVIEW NURSING HOME, FARMINGDALE, N.Y., FIVE TOWNS NURSING HOME,
WOODMERE, N.Y., FIVE TOWNS HEALTH CARE FACILITY, WOODMERE, N.Y.,
FRANKLIN PARK NURSING HOME, FRANKLIN SQUARE, N.Y., GLENGARIFF NURSING HOME,
GLEN COVE, N.Y., LONG BEACH GRANDELL, LONG BEACH, N.Y., LONG ISLAND TIDES
NURSING HOME, LONG BEACH, N.Y., MAYFAIR NURSING HOME, HEMPSTEAD, N.Y.,
NASSAU NURSING HOME, OCEANSIDE, N.Y., PARKVIEW NURSING HOME, MASSAPEQUA, N.Y.,
RIVERHEAD NURSING HOME, RIVERHEAD, N.Y., ROCKVILLE NURSING CENTER, ROCKVILLE
CENTRE, N.Y., SOUTH SHORE NURSING HOME, FREEPORT, N.Y.

BURTELL CUTLER, PRESIDENT
NASSAU COUNTY HEALTH FACILITIES
ASSOCIATION, INC.
1450 BROADWAY, NEW YORK, N.Y. 10018

Sender's Tel. No. 212-564-0150

NAME & ADDRESS:
SOLOMON, ROSENBAUM & GOODMAN
1450 BROADWAY
NEW YORK, N. Y. 10018

5



12-8

JANUARY 12, 1976

THE ATTACHED TELEGRAM TO BE SENT TO:

GOVERNOR HUGH L. CAREY
CAPITOL
ALBANY, NEW YORK

KEVIN CAHILL, M. D.
CAPITOL
ALBANY, N. Y.

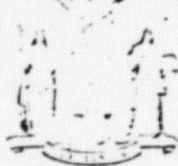
HON. RALPH G. CASO
NASSAU COUNTY EXECUTIVE
COUNTY EXECUTIVE BUILDING
MINEOLA, N. Y.

HON. JOHN V. KLEIN
SUFFOLK COUNTY EXECUTIVE
COUNTY EXECUTIVE BUILDING
HAUPPAUGE, N. Y.

DR. JOHN DOWLING
COMMISSIONER OF HEALTH, NASSAU COUNTY
OLD COUNTRY ROAD AND COUNTY SEAT DRIVE
MINEOLA, N. Y.

DR. MARY G. McLAUGHLIN
SUFFOLK COUNTY DEPARTMENT OF HEALTH
COUNTY EXECUTIVE BUILDING
HAUPPAUGE, N. Y.

MR. EARL WRIGHT, DIRECTOR
HEALTH FACILITIES AND PLANNING
UNITED STATES HEALTH, EDUCATION AND WELFARE DEPARTMENT
26 FEDERAL PLAZA
NEW YORK, N. Y.



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

DAVID W. BURKE
SECRETARY TO THE GOVERNOR

February 17, 1976

Dear Mr. Cutler:

Governor Carey has asked me to respond to your telegram concerning certain labor negotiations between the Nassau County Health Facilities Association and Local 1115 of the Nursing Home and Hospital Employees Division.

Medicaid rates will not be revised to reflect wage increases. That policy has been promulgated as part of the Commissioner of Health's reimbursement rules. In addition, the Governor has recommended to the Legislature the imposition of a 1976 freeze on residential health care facility rates. The financial situation facing the State and its political subdivisions requires such action.

It is not, nor has it ever been, the State's policy to participate in labor negotiations other than with its own workers. We appreciate your informing us of your decision, but we would hope a settlement can be achieved between your association and the employees so as to avoid any situation which could possibly endanger the welfare of the patients entrusted to your care.

Sincerely,

David W. Burke

Mr. Burtell Cutler
President
Nassau County Health Facilities, Inc.
600 West Broadway
Long Beach, New York 11561

*Rx 9 m
6-23-76
P.N.*

58

NASSAU COUNTY HEALTH FACILITIES ASSOCIATION, INC.

1450 BROADWAY • NEW YORK, NEW YORK 10018 • TEL 564-0150

ILFON GOODMAN
Executive Director

SOLOMON ROSENBAUM & GOODMAN
Counsel

May 3, 1976

Robert P. Whalen, M.D.
Commissioner
State of New York
Department of Health
Tower Building
Empire State Plaza
Albany, New York 12237

Dear Commissioner Whalen:

On Thursday, April 29th, Dan Horan and I met with Donald Davidoff, Eugene Myzokowski and Jack Herbst of the Department of Health.

This meeting was held in order to discuss the inequities of using external factors for the year 1975, for the labor component of the two year trending factor (15%) for the 1976 rate as opposed to the internal factor for labor for that year. The internal labor factor 17.01 for the year 1975 was approved for our 1975 rate by your department and also by the Director of budget. The reasoning for using external factors only was based on Part 86.17. I pointed out that Part 86.17 was dated November 1, 1975 and, although we do not necessarily agree with Part 86.17, the proper application would be only for the year 1976 and, therefore, the internal factor should be used for 1975.

I am going to demonstrate by the means of an example, the disastrous effect on the homes in the association of using external factoring only.

Example (1) A 200 bed nursing home have operating cost of \$2,500,000 for the base year 1974.

- (2) External labor component for the years 1975-1976 15.5%.
- (3) Internal labor component for the year 1975 - External component for the year 1976 24%.

External Component

\$2,500,000
 .155
\$ 387,500

Internal 1975 - External 1976

\$2,500,000
 .24
\$ 600,000

*Rx 10/23/76
P-12*

39

Difference in method	\$600,000
	<u>387,500</u>
Difference if 100% Medicaid	<u>\$212,500</u>
Difference if .82% Medicaid	<u>\$170,000</u>

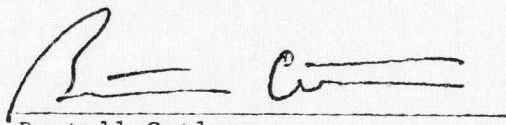
As the example demonstrated, a home with 100% Medicaid population would lose \$212,500 and this could force many of the homes in our association to close. For this reason and the fact that Part 86.17 didn't come into effect until the end of 1975, it would be unconscionable for the state to use external components only for the trending factor.

I and the membership of the association are aware that in the cause of good government, it is incumbent upon your department as well as all other departments of the state to be extremely cost conscious in the distribution of the tax payers money. We the members of the association also feel we have the same responsibilities of controlling costs as they pertain to the Medicaid program. But I cannot emphasize enough the disastrous effect of using an improper trending factor on the homes in our association.

If there is anything further that you may require, please do not hesitate to contact me at your earliest convenience.

Respectfully submitted,

NASSAU COUNTY HEALTH FACILITIES
ASSOCIATION, INC.


Burtell Cutler
President

BC/cap

cc: Mr. Peter Goldmark, Director of the Budget
Mr. Ronald B. Davidoff, Associate Director, Division of
Health Economics
Dr. Kevin Cahill
Mr. Daniel M. Horan, Schachter and Horan, P.C.



ROBERT P. WHALEN, M.D.
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

May 21, 1976

Dear Mr. Cutler:

This is in reply to your letter of May 3, 1976, concerning a specific aspect of the development of trend factors for use in 1976 Medicaid rates for residential health care facilities.

The example you set forth in your letter is accurate. When decisions were reached in regard to the termination of the former policy of passing through labor costs, it was specifically decided that the attained level concept would not be carried forward into 1976 rates. It was recognized that this decision would produce some hardships, but a uniform policy, applicable to all health facilities has been adopted. A similar problem faces other residential health care facilities, as well as most of the major hospitals in this state.

The fiscal plight of the political subdivisions and the State of New York requires that difficult decisions be reached. The situation you describe is one of those cases.

Sincerely yours,

Robert P. Whalen, M.D.
Commissioner of Health

Burtell Cutler
President
Nassau County Health Facilities
Association, Inc.
1450 Broadway
New York, New York 10018

*Call me
B. R.*

Mayfair

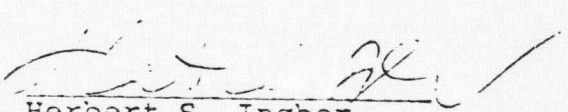
Nursing Home

100 Baldwin Road Hempstead, New York 11550 516-535-7171

December 18, 1973

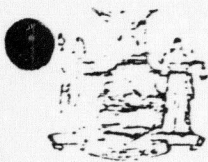
It is the policy of the Mayfair Nursing Home to admit and to treat all patients without regards to Race, Creed, Color, National origin, Sex or Sponsor. The same requirements for admission are applied to all, and the patients are assigned within the facility without regards to Race, Creed, Color, National Origin, Sex or Sponsor. There is no distinction in eligibility for, or in the manner of providing any patient service provided by or through the facility. All facilities are available without discrimination to all patients and visitors. All persons and organizations that have occasion to either refer patients to, or recommend the Mayfair Nursing Home are advised to do so without regards to the patient's Race, Creed, Color, National Origin, Sex or Sponsor.

MAYFAIR NURSING HOME


Herbert S. Ingber
Administrator

Title VI of the Civil
Rights Act of 1964
STATE AND FEDERAL LAWS PROHIBIT
DISCRIMINATION BASED ON RACE,
CREED, COLOR, NATIONAL ORIGIN
SEX OR SPONSOR.

*Rx 12 mg
B.N.*



ROBERT F. WHALEN, M.D.
COMMISSIONER

62
STATE OF NEW YORK
DEPARTMENT OF HEALTH

TOWER BUILDING
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12237

DIVISION OF
HEALTH ECONOMICS

WILLIAM F. MC CANN
ASSISTANT COMMISSIONER

DONALD B. DAVIDOFF
ASSOCIATE DIRECTOR

December 22, 1975

Mr. Alex De Laurentis
Vice President
Local 1115 Joint Board
126 University Place
New York, New York 10003

Dear Mr. De Laurentis:

Dr. Whalen and Dr. Cicero have asked me to reply to your telegrams concerning our policy on reimbursement to health facilities to pass through wage increases.

The recent amendments to Part 86 of the Commissioner's Rules and Regulations do not prevent 1975 Medicaid rate appeals for union negotiations effective prior to November 1975. The new rules do prohibit health facilities from obtaining rate revisions because of labor negotiations effective since that time.

The major unions active in the health facility field in New York State have always indicated that the State should have no role in labor negotiations. We agree with this position, and the new rules in no way prevent collective bargaining, although many health facility operators argue that they are unable to absorb wage increases unless they are permitted to pass through those costs to third-party sources of reimbursement.

An even more serious problem is currently before us. The City of New York, the other political subdivisions and the State of New York now find themselves unable to pay for services at current, let alone higher levels. Public employees are being faced with wage freezes and cutbacks, as well as reductions in fringe benefits and longer work weeks. The Legislature has been

R+13

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Mr. Alex De Laurentis

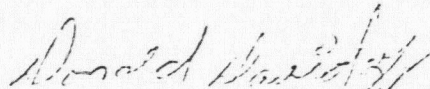
-2-

December 22, 1975

asked to address serious attention to major statewide tax increases and substantial program cuts, including a 1976 freeze on nursing home Medicaid rates.

It is very likely that a series of industry meetings will be proper and necessary once the entire scope of fiscal cuts is known.

Sincerely yours,



Donald B. Davidoff
Associate Director

HOSPITAL MEMORANDUM . . .

Series - 75-159
Date - 10/31/75

SUBJECT: Health Facility Reimbursement Rates of Payment for the
Period January 1, 1976 through December 31, 1976

Each hospital, nursing home, health related facility, treatment or diagnostic center and home health agency has been directly notified of its Medicaid reimbursement rates for the period January 1, 1976 through December 31, 1976.

The individual rates for each health facility were developed on an interim basis. New legislation concerning 1976 reimbursement, and still unresolved aspects of Part 86 of the Commissioner's rules have made it impossible to promulgate final health facility rates at this time. Final rates reflecting either upward or downward revisions will be promulgated as soon as possible.

All interested persons will be provided with the rate schedules prior to the effective dates of the 1976 rates.

William F. McCann

William F. McCann
Assistant Commissioner
Division of Health Economics

Endorsement:

Frank T. Cicero M.D.

Frank T. Cicero, M.D.
Deputy Commissioner for
Health Facilities, Economics
and Preventive Health Services

*Rx 14 m
6-23-76
J.R.*

HOSPITAL MEMORANDUM . . .

Series - 75-160
Date - 10/31/75

SUBJECT: Revisions to Part 86 of the Commissioner of Health's
Administrative Rules & Regulations

Attached for your information are revisions to Part 86 of the Commissioner of Health's Administrative Rules and Regulations related to mid-year adjustments, appeals for rate revisions and the determination of allowable costs in a base year. These revisions will also be included in the rules and regulations currently being developed for residential health care facilities.

The revised Section 86.15(b)(4) provides for mid-year adjustments, at the discretion of the Commissioner of Health, when the economic indicators used in establishing the rates are determined to have been under or over actual trends.

The revised Section 86.17 specifically identifies the conditions under which a rate revision appeal can be considered by the Commissioner. The final 1976 reimbursement rates to be promulgated, except for rate adjustments resulting from appeals permitted under this revised section and any revisions made by the Commissioner of Health in accordance with Section 86.15(a)(4) of Part 86, will be final rates and no adjustments for any other reasons will be made.

With respect to base year allowable costs, Section 86.21(k) implements the principle that for reimbursement purposes health facility costs may not increase at a rate in excess of the inflation trend factor developed by the Department. The only exception to this rule is for approved cost increases as identified in Section 86.17.

These revisions have on this date been forwarded for comment to the Speaker of the Assembly and the Temporary President of the Senate in accordance with New York State law.

William F. McCann

William F. McCann
Assistant Commissioner
Division of Health Economics

Endorsement:

Frank T. Cicero M.D.

Frank T. Cicero, M.D.
Deputy Commissioner for Health
Facilities, Economics and Preventive
Health Services

Attachment

*pt 15-1 and
S.K.*

Pursuant to the authority vested in the Commissioner of Health by §§ 2805 and 2807 of the Public Health Law, Part 86 of the Administrative Rules and Regulations contained in Subchapter K, Chapter 11, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended this day of , 1975 to be effective upon filing with the Secretary of State as follows:

Subdivisions (a) and (b) of § 86.17 are hereby REPEALED and new subdivisions (a) and (b) are hereby added to read as follows:

86.17 Revisions in Certified Rates

(a) The State Commissioner of Health may consider only those applications for prospective revisions of certified rates which are based on

(1) requests for revisions in 1975 reimbursement rates for cost increases incurred prior to the effective date of this section;

(2) errors made in the rate computation process or in the submission by a medical facility which have been brought to the attention of the Commissioner within the time limits prescribed in Section 86.16;

(3) significant increases in the over-all operating costs of a medical facility resulting from the implementation of additional programs, staff or services specifically mandated for the facility by the Commissioner;

(4) significant increases in the over-all operating costs of a medical facility resulting from capital renovation, expansion, replacement or the inclusion of new programs, staff or services approved for the medical facility by the Commissioner;

(5) requests for waivers of any provisions of Part 86 for which waivers may be granted by the Commissioner as prescribed in specific sections; and

(6) changes in the method of providing services which result in a lower over-all cost for the services provided.

(b) Any request for the prospective modification of a certified rate must be accompanied by financial, statistical and program evidence sufficient to demonstrate over-all fiscal impact.

Section 86.21 is hereby amended by adding thereto a new subdivision (k)

86.21(k) Effective for fiscal years ending in 1976 and thereafter allowable costs per unit of service (in-patient day, clinic visit, etc.) in a base year will not include any cost increases over the prior year which are in excess of the inflation factor used by the Department in determining the reimbursement rate in effect during such base year unless the cost increases in the base year resulted in a rate revision during the rate year in accordance with § 86.17.

Subdivision (b) (4) of § 86.15 is hereby REPEALED and a new subdivision (b) (4) is hereby added to read as follows:

86.15 (b) (4) During the rate period the cost indicators used in determining the projection factors in establishing the current certified rates may be compared with available data on such indicators, and any other economic indicators as deemed appropriate by the Commissioner of Health, as of the mid-point in the rate period. Based upon such review the Commissioner may, in his discretion either certify new rates or adjust subsequent rates for any period or portion thereof when he determines that such new rates or adjusted rates are necessary to avoid substantial inequities arising from the use of previously certified rates.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

NASSAU COUNTY HEALTH FACILITIES, INC. and its members:

BAYVIEW NURSING HOME,

CENTRAL ISLAND NURSING HOME,

COMMUNITY DRIVE NURSING HOME,

Case No. 29-CA-4797

DALEVIEW NURSING HOME,

FIVE TOWNS NURSING HOME,

FIVE TOWNS HEALTH RELATED FACILITY,

FRANKLIN PARK NURSING HOME,

GLENGARIFF NURSING HOME,

GRANDELL NURSING HOME,

LONG ISLAND TIDES NURSING HOME

MAYFAIR NURSING HOME,

NASSAU NURSING HOME,

PARKVIEW NURSING HOME,

RIVERHEAD NURSING HOME,

ROCKVILLE NURSING HOME,

SOUTH SHORE NURSING HOME

and

ST. JAMES NURSING HOME

29-CA-4798

ST. JAMES PLAZA

29-CA-4799

HUNTINGTON NURSING HOME

29-CA-4800

HUDSON VIEW MANOR

29-CA-4801

HUDSON VIEW NURSING HOME

29-CA-4802

and

CARILLON HOUSE

29-CA-4803

H.R.F.

and

LOCAL 1115, JOINT BOARD NURSING
HOME AND HOSPITAL EMPLOYEES
DIVISION16 Court Street,
Brooklyn, New York
Tuesday, June 22, 1976

The above-entitled matter came on for hearing,

pursuant to notice, at 10:00 o'clock, a.m.

BEFORE:

HERZEL H.E. PLAINE, Administrative Law Judge

APPEARANCES:

HOWARD EDELMAN, ESQ.

Brooklyn, New York,
appearing on behalf of the
Counsel for the General
Counsel.

IRVING REIER, ESQ.

Law firm of Solomon
Rosenbaum Goodman Reier &
Ross
1450 Broadway, New York,
appearing on behalf of
Nassau County Etc.

M.
RICHARD GREENSPAN, ESQ.

Law firm Charles R. Katz,
360 Lexington Avenue, New
York, New York, Appearing
for the Charging Party

PAUL BANON, ESQ.

Law firm of J. Ozias
Kaufman, 103 Cooper Street,
P.O. Box 248, Babylon, New
York, appearing on behalf
of Daleview Nursing Home.

ARTHUR KAUFMAN, ESQ.

Law firm of Jackson Lewis
Schnitzler & Krupman,
261 Madison Avenue, New
York, New York, appearing
on behalf of Hudson View
Manor and Hudson View
Nursing Home.

J. MILFORD HULL, Esq.

Law firm of Huss Block &
Grundfast, 8 Manor Road,
P.O. Box 623, Smithtown,
New York, appearing on
behalf of St. James
Nursing Home and St. James
Plaza.

I N D E XWITNESSES:DIRECTCROSSREDIRECT

Alex DeLaurentis

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Alan Gordon

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EXHIBITS:FOR IDENTIFICATIONIN EVIDENCE

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2A through 2D

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3A through 3D

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1 We feel that the evidence will support our
2 position.

3 Thank you.

4 JUDGE PLAINE: I think I understand the issue that
5 has been joined.

6 Why don't we proceed with the trial of the case.

7 MR. EDELMAN: Your Honor, general counsel would
8 call as its first witness Alex DeLaurentis.

9 Whereupon,

10 ALEX DE LAURENTIS

11 called as a witness, having been first duly sworn by
12 Judge Plaine, was examined and testified as follows:

13 DIRECT EXAMINATION

14 Q (By Mr. Edelman) What is your name?

15 A Alex DeLaurentis.

16 Q Do you hold a position with Local 1115?

17 A I do.

18 Q What is that position?

19 A I am vice president of Local 1115 joint board.

20 Q How long have you held this position?

21 A Approximately five years.

22 Q Prior to that did you hold a position with the
23 union?

24 A Yes. I am presently secretary treasurer of the
25 individual local and I have held the -- prior to that

1 I was president, vice president and also secretary
2 treasurer of the local itself.

3 Q Going back how many years is that?

4 A Approximately 12, 14 years.

5 Q What is the relation between the local and
6 joint board?

7 A The local 1115 joint board is the head of all
8 the locals. The locals individually belong to Local
9 1115 joint board.

10 Q What locals does that encompass?

11 A Local 1115 nursing home and hospital employees
12 division and Local 1115 employees division.

13 We have a Local 1115 nursing home hospital division
14 in Miami and we also have a Culinary Division (phonetic)
15 that belongs to Local 1115 joint board.

16 Q Now, with respect to your duties in the last five
17 or six years as vice president of the joint board,
18 could you explain to us what they include?

19 A They include negotiations contracts, dominating
20 work as is fulfilling the obligation to see that these
21 contracts are put into effect and lived up to to the
22 degree that the contract holds provision for wages,
23 hours and general terms and conditions of employment.

24 Q Now, I am going to direct your attention to
25 past collective bargaining history with respect to

1 respondents nursing homes and health related
2 facilities prior to 1975 when the present contracts
3 became effective.

4 I am going to ask you whether or not the joint
5 board had any collective bargaining agreements with
6 the Nassau County Health Association.

7 A Local 1115 joint board prior to this agreement had
8 contracts or a contract with the facilities that you
9 are speaking of and prior to that it was on an
10 individual local basis and the joint board did not come
11 into effect or into being I believe until approximately
12 five or six years ago.

13 Q What were the units that the joint board
14 represented in connection with the Nassau County
15 Health Association and its members?

16 A It covered the blue collar employees which is
17 a nonlicensed personnel.

18 It covered licensed practical nurses.

19 It covered registered nurses.

20 Q Were these separate agreements or one agreement
21 covering all three units?

22 A Separate units.

23 Q In connection with the registered unit, did that
24 include nurse supervisors?

25 A It included them but we did not have prior to this

1 last agreement a separate agreement with supervisors.

2 We now have four agreements which call for
3 blue collar, licensed practical nurses, registered
4 nurses and registered nurse supervisors.

5 Q I take it then tat the agreement which expired
6 in 1975 which covered the registered nurses included
7 in that unit were the supervisors?

8 A It covered them.

9 MR. EDELMAN: With respect to the Association,
10 I take it that we can get a stipulation that the members
11 of the Association are as set forth in the complaint
12 or in the amended complaint?

13 MR. REIER: One of the nursing homes I think is
14 represented by other counsel who has withdrawn from
15 the association.

16 MR. EDELMAN: As of the date the complaint was
17 issued?

18 JUDGE PLAINE: Which paragraph of the complaint
19 is that?

20 Would it be the opening numbered paragraph on
21 Page 1 of the amended complaint?

22 MR. EDELMAN: I thought you were referring to a
23 specific allegation.

24 It would refer to the introductory paragraph,
25 your Honor.

1 JUDGE PLAINE: Your stipulation requested was
2 whether that was accurate as of when?

3 MR. REIER: As of the date of the complaint and
4 that is not so.

5 Daleview was not a member of the association as
6 of the date of the complaint.

7 MR. EDELMAN: Can we get a stipulation as to when
8 Daleview withdrew its membership?

9 MR. REIER: I am not certain because it's a source
10 of contention as to when its obligation terminated.
11 It is not a member of the association as of the date of
12 the issuance of the date of the complaint.

13 That date was May 3, 1976.

14 MR. EDELMAN: Can we get a stipulation that
15 Daleview was a member of the association as of January
16 1, 1976?

17 MR. REIER: Daleview contends that it withdrew
18 from the association as of the end of 1975.

19 MR. EDELMAN: What date was that?

20 MR. REIER: December 31, 1975.

21 MR. EDELMAN: Daleview was bound and a member
22 of the association at the time of the 75 agreement
23 was entered into and negotiated?

24 MR. REIER: 1974, that is correct.

25 MR. EDELMAN: It was a member of the association
during 1975 until the end of '75 during which time the

1 present contract and its terms were in effect?

2 MR. REIER: That is correct.

3 MR. EDELMAN: Is counsel for Daleview present?

4 MR. BANON: Yes, I am.

5 MR. EDELMAN: Before we hear from counsel from
6 Daleview, can we get a stipulation with respect to all
7 the other members of the association, that they are
8 presently members of the association?

9 MR. REIER: As I indicated I am not certain of the
10 status of Community Drive Nursing Home whether it
11 exists as a legal entity now.

12 It has been placed in receivership and I have not
13 seen the terms of the receivership and I do not know
14 the status.

15 MR. EDELMAN: Do you know when it was placed in
16 receivership?

17 MR. REIER: Approximately a month to six weeks ago.

18 MR. EDELMAN: As of a month to six weeks ago,
19 the nursing home was a member of the association and
20 that it is presently in receivership, can we stipulate
21 to that?

22 JUDGE PLAINE: What's the name of the nursing home?

23 MR. REIER: Community Drive Nursing Home.

24 MR. EDELMAN: I take it with respect to all others
25 they are presently members of the association?

1 MR. REIER: All others.

2 JUDGE PLAINE: As listed on Page 1 of the amended
3 complaint?

4 MR. REIER: Yes, your Honor.

5 MR. EDELMAN: Now, with respect to Daleview,
6 would counsel for Daleview state the position of
7 Daleview as to when and if it withdrew from the
8 association?

9 MR. BANON: I am not sure, but, I would stipulate
10 we were a member of the association at the time the
11 agreement was entered into and since that time we have
12 withdrawn from the association.

13 MR. EDELMAN: You were also a member of the
14 association I take it during a major part of 1975
15 during which time the agreement was in effect?

16 MR. BANON: Yes.

17 Q (By Mr. Edelman) Now, Mr. DeLaurentis,
18 I direct your attention to Huntington Nursing Home.

19 Prior to the present agreement did the joint board
20 or local have a collective bargaining agreement with
21 Huntington?

22 A Yes, for the blue collars, not the other units.

23 Q What units did you represent?

24 A Prior to September of 1975 we represented the
25 blue collar employees.

1 Q For how long about?

2 A I would say two agreements which would be
3 approximately six, seven years.

4 Q With respect to Carrillon, prior to the present
5 agreement, what if any units did you represent?

6 A In Carrillon we still only represent the blue collars
7 employees and there has been, I believe three agreements
8 with this one.

9 Q With respect to St. James Nursing Home, what
10 units did you represent prior to 1975?

11 A We represented the blue collar, LPN's, registered
12 nurses.

13 Q Including the supervisors?

14 A Yes.

15 Q Those were three separate agreements?

16 A Yes.

17 Q For how long did you have a bargaining history
18 with this nursing home, approximately?

19 A Approximately seven years, maybe more.

20 Q With respect to St. James ^{PLAZA} Manor, what if any units
21 did you represent prior to 1975?

22 A We only represent the blue collar employees in
23 the manor and that's approximately since 1973.

24 Q With respect to Hudson View Nursing Home, what if
25 any units did you represent prior to 1975?

1 A Prior to 1975 we did represent blue collar
2 employees which was a longer term than the licensed
3 practical nurses and the registered nurses, but, the
4 registered nurses there are some exceptions to some
5 supervisors, but, we do have supervisors included.

6 Q Now, with respect to the blue collar, so-called
7 blue collar contract, about how long did you represent
8 those employees?

9 A I would say minimal 10, 12 years.

10 Q With respect to LPN's and RN's?

11 A The LPN's approximately six years, seven years.

12 Q The RN's?

13 A Maybe within the last three years, four years.

14 Q I take it these were separate agreements as well,
15 is that correct?

16 A Yes.

17 Q With respect to Hudson View Manor, what if any
18 employees did you represent at that nursing home?

19 A Blue collar employees.

20 Q About how long was that representation?

21 A Eight, nine years I would say.

22 I would also like to comment with respect to
23 Hudson View Nursing Home, there is a maintenance
24 contract which is separate and apart from the blue collar
25 contract.

1 Q That would be four contracts with Hudson View?

2 A It would be four or five, I think there is a
3 licensed -- there's a blue collar, maintenance, LPN
4 and RN.

5 Q What would be the difference?

6 A There are four classifications.

7 Q What would be the difference between the so-called
8 blue collar and maintenance contract?

9 A There might be a different pay structure and
10 it is a separate unit itself.

11 We organized them separately. When we first
12 organized Hudson View, it included just the aides,
13 orderlies, housekeeping but there were no maintenance
14 employees included in that unit.

15 At a later date the maintenance employees were
16 organized and then there was an agreement for the
17 maintenance employees.

18 Q Would it be fair to say that the other agreements
19 or the other nursing homes were you referred to a blue
20 collar unit, that you are talking about aides, orderlies
21 as well as maintenance employees?

22 A Yes. This is the unusual one, I would say in
23 Hudson View.

24 Q There came a time I take it that the 1974 agreement
25 expired, is that correct?

1 A No, it was due for reopening.

2 Q I see. Then there were negotiations in what year?

3 A In 1974.

4 Q About what period of 1974 did these negotiations
5 take place?

6 A It was during the months of November and December.
7 I know notices were sent out to the employer or to
8 the association or employers if they were individual,
9 independent.

10 Q Did these negotiations take place with the
11 association as well as each individual respondent
12 nursing home?

13 A The association was separate and apart and the
14 association contract has always set the pace as to what
15 the independent would fall in line with.

16 In other words, the association negotiations took
17 place maybe simultaneously, but, the association
18 always concluded first and based on that, I shouldn't
19 say always, but, it has been in the last couple of
20 contracts.

21 Q There were separate negotiations I take it with
22 the association and the various independent nursing
23 homes?

24 A Yes. They picked up the language and terms and
25 conditions almost to the tee.

1 Q These negotiations that we are talking about,
2 I take it they resulted in the execution or present
3 existing bargaining agreements?

4 A That is correct.

5 Q In connection with the negotiations that took place
6 in the months of November and December or thereabouts
7 of 1974, did you take part in these negotiations?

8 A Yes, I did.

9 Q Can you tell me who took part in the negotiations
10 on behalf of the joint board?

11 A Mr. Juvall and myself and there were other
12 representatives of the union present.

13 Q Were you present at all of these negotiations?

14 A I would -- I would say almost all of them. I
15 doubt if I missed any of them. It could be that I have,
16 but I don't think I did.

17 Q When I say these negotiations, I refer to the
18 negotiations with the respondent association as well
19 as the negotiations with the individual respondents.

20 A Well, I would say that memorandums of agreement
21 reflecting the same terms and conditions and language
22 were gotten from other employers independent where they
23 accepted the complete terms and conditions, language
24 structure with the exception to the rules there might
25 have been some changes here and there in some contracts.

1 Q My question to you was:

2 When negotiations, actual negotiations took
3 place with respect to the independent respondent that
4 we have here, were you present at these negotiations?

5 A I was present at some of them and as I said before,
6 I might not have been at some of them and my
7 associate Mr. Juvall or maybe some of the other
8 representatives, based on an agreement that has been
9 reached with the Nassau County Nursing Home Association,
10 a memorandum agreement binding them to such an agreement
11 took place.

12 Q Were you present at all of the negotiations with
13 respect to the association?

14 A Yes, I was.

15 Q Now, during these negotiations with respect to
16 the association, who were the association's chief
17 negotiators?

18 A Mr. Cutler, Mr. Reier as the attorney for the
19 association, Mr. Sreter, Mr. Kemullson -- I don't know
20 whether he was part of the negotiating team or not --
21 there was a Mr. Fellman present.

22 There were quite a number of employers present
23 and I just don't recall the exact --

24 Q Would it be fair to say that employers of various
25 members of the association were present?

1 A Yes. There was a Mr. Grecco, if I am not mistaken.

2 Q The chief negotiators would be Mr. Reier and
3 Mr. Cutler?

4 A Yes.

5 Q With respect to St. James Nursing Home and St.
6 James Plaza, were these negotiated together?

7 A Yes, they were negotiated with Mr. Goodman out
8 of Mr. Reier's office.

9 I believe I was present at that time with St.
10 James Nursing Home and St. James Plaza.

11 Mr. Reier, Mr. Juvall, he might have been there,
12 I think he was there, myself and also a representative
13 of the union were present when we concluded a memorandum
14 of agreement accepting the terms and conditions,
15 the same as the association project.

16 Q Were there extensive negotiations with respect
17 to St. James Nursing Home and St. James Plaza?

18 A Not too extensive because the die was cast in
19 reference to the rates.

20 Q With respect to the association?

21 A Yes, and that sort of sets the pace as I said
22 before.

23 Q With respect to Carrillon, who was the negotiator
24 for Carrillon?

25 A I also went into Carrillon based on the Nassau

1 County Health Facilities.

2 Q Who was for Carrillon?

3 A At that time I believe Mr. Reier represented
4 Carrillon or maybe no one at all.

5 I think the employer and myself, the employers,
6 both Mr. Krillos were present and I think we agreed
7 also to a memorandum of agreement to accept the same
8 terms and conditions as the Nassau County Nursing Home
9 Association.

10 Q Are you saying there was basically one negotiation
11 session with respect to Carrillon?

12 A I wouldn't want to say for sure but I basically
13 think it was one.

14 There might have been several but I think it was one.

15 Q How about St. James Home and St. James Plaza,
16 would that be true as well?

17 A That would be true as well.

18 Q With respect to Huntington Nursing Home, who
19 were the negotiators for the company on those
20 negotiations?

21 A Huntington Nursing Home, I believe it might have
22 been Mr. Hull at that time and that also was a
23 memorandum of agreement that they would pick up the
24 agreement that Nassau County Health Facilities had.

25 Q What is the sum total of negotiations with respect

1 to Huntington? Was that one to the best of your
2 knowledge or in excess of one?

3 A I am not quite sure. It might have been in excess
4 of one, but basically it might have been one.

5 It might have been two.

6 JUDGE PLAINE: Off the record.

7 (Discussion off the record)

8 JUDGE PLAINE: Back on the record.

9 Q (By Mr. Edelman) With respect to Hudson
10 View Manor and Hudson Nursing Home, who were the
11 negotiators for the nursing homes?

12 A Myself, Mr. Gordon, I believe Mr. Sanford Jr.
13 and that was done in my office with several
14 negotiations.

15 I don't know that it was concluded immediately.

16 Q Now, you say Mr. Gordon and Mr. Sanford were
17 the negotiators.

18 Were these co-negotiators?

19 A They were owners or co-owners or partners
20 or whatever, but they are the principals that I have
21 dealt with over the years and that's the parties I
22 have dealt with in my office basically and also
23 negotiated up in the nursing home with anegotiating
24 committee.

25 MR. EDELMAN: Your Honor, this is an appropriate
point, I believe, to suspend momentarily my examination

(Whereupon General Counsel's
Exhibit 1 marked in evidence)

JUDGE PLAINE: Continue, Mr. Edelman.

Q (By Mr. Edelman) In connection with the negotiations that took place with respect to the association and with respect to the various individual respondents to which you have just testified, during these negotiations was there any discussion concerning the participation of the state, local or federal government in connection with payment of the contract rates?

A No.

Q Was there any proposal on the table by the respective employers and by that I include the association, the union proposing in effect that any term and condition of the collective bargaining agreement to be entered into was conditioned on Medicaid payments?

MR. REIER: May I have that question read back?

JUDGE PLAINE: Please repeat the question.

(Whereupon repeated the last question)

Q By the state, federal or local government?

A If there were proposals they were unilaterally opposed, they would not hear of it and it would not be contingent to any negotiations that we had in any conclusions.

1 MR. REIER: I object, the answer is not responsive
2 to the question.

3 JUDGE PLAINE: I agree, try it again.

4 Do you remember what the question was?

5 Was there any proposal on this subject?

6 THE WITNESS: Subject of contingency?

7 JUDGE PLAINE: Yes.

8 THE WITNESS: There were no proposals to contingent
9 for the wages that were negotiated.

10 Q (By Mr. Edelman) Wages or other terms?

11 A As far as the end results of the terms and
12 conditions of that agreement, there was no contingency
13 at all.

14 Q That was proposed or discussed?

15 A Yes, that we would agree to at all.

16 MR. KAUFMAN: I go back to the same objection.

17 The witness has changed the testimony.

18 JUDGE PLAINE: Are you saying there was no proposal
19 by the other side or are you saying there was no
20 proposal by the other side that you would agree to,
21 which is your answer?

22 THE WITNESS: The union would not agree to any
23 proposal other than the terms and conditions that we
24 agreed to as it.

25 JUDGE PLAINE: Now, prior to that point were there

1 actual proposals made to you that you should agree
2 to this kind of condition? Were there proposals made
3 like that?

4 THE WITNESS: During all negotiations over the
5 last three or four contracts, those types of proposals
6 are always put on the table.

7 We don't know where we are going to get the money,
8 it is the usual cry of the employer and we only have
9 one source of getting the money and all that is part
10 and parcel of continuous negotiations.

11 The negotiations that resulted in these contracts
12 took approximately 20 to 22 hours straight from 10
13 o'clock in the morning, I believe or 9 o'clock in the
14 morning until four o'clock the next morning.

15 JUDGE PLAINE: Were any of these proposals that
16 contingent payments be put in writing or are you saying
17 it was just a matter of oral discussion?

18 THE WITNESS: Oral discussions as per usual
19 negotiations that why an employer or employees cannot
20 pay this and cannot pay that which the union paid no
21 attention to as Mr. Hull made a statement to before.

22 JUDGE PLAINE: I take it you are suggesting that
23 this was a sort of the wringing of the hands by the
24 negotiators for the employer, but you are pushing us,
25 we can't get more, is that what you are telling me?

1 THE WITNESS: That is correct, that's where
2 we came down to a bottom line that they caucus back
3 and forth and we reduced our demands to the point that
4 this settlement was reached to be final and binding
5 without any contingencies whatsoever.

6 JUDGE PLAINE: Continue.

7 Q (By Mr. Edelman) As part of your final agreement,
8 final oral agreement which led to the execution of the
9 present agreement, I take it, that there was no
10 condition either by the association or by the
11 individual respondents that payments of any term of
12 the contracts ultimately entered into was conditioned on
13 Medicaid payments?

14 A Absolutely not.

15 Q Now, I proposed to let you look at four agreements
16 which apparently are the present agreements between
17 the joint board and the association, perhaps we can
18 mark these as General Counsel Exhibit 2A, B, C and D
19 for identification.

20 JUDGE PLAINE: Please mark the documents as General
21 Counsel Exhibit 2A, 2B, 2C, 2D for identification.

(General Counsel Exhibit No. 2A,
22 2B, 2C and 2D marked for
23 identification)

24 Q (By Mr. Edelman) I show you General Counsel
25 Exhibit No. 2A through D and ask you to look at those

1 Q Now, with respect to the association
2 agreement and all other agreements between Local 1115
3 and the independent respondents, were all the contract
4 terms for all of these employers including the
5 association lived up to during the year 1975?

6 A To the best of my knowledge, yes with the
7 exception of Huntington which might have been laxed in
8 payments (phonetic) and still owes payments if I am not
9 mistaken retroactively on the LPNs, registered nurses,
10 clerical activity directors and all that are in that
11 stipulation that I just read off.

12 There are moneys due also within that.

13 Q As to what?

14 A Prior to the January 1 increase there are
15 increases due retroactive which have not been paid.

16 Q Increases for what?

17 A For the group that I just mentioned.

18 Q Wages?

19 A Wages.

20 JUDGE PLAINE: This explanation relates to
21 Huntington?

22 THE WITNESS: This only reflects to Huntington,
23 the stipulation dated September 10, 1975.

24 JUDGE PLAINE: What was the question?

25 Q Whether the other contracts were complied to in

1 1975 and his answer was yes they were with the
2 exception of this Huntington stipulation.

3 A There might be prepaid legal or welfare programs
4 I am not sure.

5 There is sick leave moneys due that were not
6 complied with.

7 Q That began in 1975?

8 A Well, after -- from the date of the stipulation it
9 might have been retroactive to a certain date in '75.

10 I don't know exactly what it is.

11 Q Did Huntington comply with any of these terms
12 following the execution of the stipulation at any time?

13 A It followed some but not all.

14 Q In other words, from the time the stipulation
15 was entered into there were certain items that Huntington
16 was delinquent in?

17 A Correct.

18 Q As to the other employers and other contracts
19 with Huntington and after the association, all terms
20 were complied with to the best of your knowledge during
21 the year 1975?

22 A On the other agreement it might have been complied
23 with in full.

24 I think sick leave money might not have been paid
25 for 1975, part of it has not been paid.

1 Q That's Huntington?

2 A Yes, that only refers to Huntington.

3 Q That's with respect to General Counsel Exhibit 8A?

4 A Yes, that's the contract for the blue collar
5 employees.

6 Q With respect to the other agreements between the
7 association and all of the other homes, all of the
8 agreements between the union and these employees and the
9 association I take it, that they were complied with
10 during 1975?

11 A Yes, to the best of my knowledge they were.

12 JUDGE PLAINE: Did this compliance reflect
13 certain increases over '74 in wages and benefits?

14 THE WITNESS: No.

15 JUDGE PLAINE: In general?

16 THE WITNESS: The increases only refer -- these
17 agreements that have been set forth here, given to
18 me to review were only as of January 1, 1975 with the
19 exception of the R.N. contract at Hudson Nursing Home
20 which was July 1, 1975, but, subsequent to that the
21 increase that was due in '76 has not been paid.

22 JUDGE PLAINE: You misunderstood my question, I
23 believe.

24 MR. EDELMAN: The question is, if I may, your
25 Honor, with respect to the '75 contract, when was the

1 first wage increase due under that contract.

2 THE WITNESS: January 1, 1975.

3 JUDGE PLAINE: So, what you're saying is there
4 were increases in '75 both in wages and benefits?

5 THE WITNESS: rect.

6 JUDGE PLAINE: These were complied with?

7 THE WITNESS: Yes.

8 JUDGE PLAINE: The default in general, other than
9 the Huntington case that you have marked out started
10 in '76, is that right?

11 THE WITNESS: That's right, your Honor.

12 JUDGE PLAINE: Continue.

13 Q (By Mr. Edelman) Now, with respect to the
14 month of December in 1975, I direct your attention to
15 the first week or so in December and ask if you recall
16 having at that time a conversation with Mr. Reier and
17 any other association representatives?

18 A Yes, there was a meeting in my office with Mr.
19 Juvall, myself -- Mr. Juvall is the area director for
20 the union -- and Mr. Cutler.

21 Q Who is Mr. Cutler?

22 A He is president of the Nassau County nursing home
23 association or health associates, whichever they call
24 it now and I believe Tom Notey.

25 Q Who is Mr. Notey?

1 A There were other employers.

2 JUDGE PLAINE: You forgot to tell us who Mr. Notey is.

3 THE WITNESS: He is an employer of St. James Plaza,
4 St. James Nursing Home and also South Shore Nursing Home.

5 Q (By Mr. Edelman) He owns the facilities or
6 is the president of the corporation?

7 A I don't know his complete status. Perhaps Mr.
8 Hull could enlighten me.

9 MR. HULL: He is responsible with respect to
10 the St. James Plaza. He has nothing to do with the
11 nursing home and he has nothing to do with the one in
12 Nassau County either.

13 THE WITNESS: I must say that he was there on behalf
14 of the three of them.

15 Q (By Mr. Edelman) Representing who?

16 A Well, his father or his brother owns or several
17 partners might own St. James Nursing Home and South
18 Shore Nursing Home, but, he was there on behalf of
19 Central General -- I'm sorry, Central Island Nursing
20 Home.

21 He was there on behalf of South Shore Nursing Home
22 and he was there on behalf of -- at that point, I
23 shouldn't even mention St. James Plaza because he was
24 there with the Nassau County Nursing Home Association
25 and St. James Plaza is not part of that and so, I have

1 to take that back. He was there on behalf of the
2 Nassau County Institution that he is connected with
3 Central Island Nursing Home and Guth Shore.

4 Q What is Mr. Cutler's position?

5 A President of the Nassau County Health Facilities
6 Association.

7 Q Mr. Raier is counsel for the association?

8 A That's correct.

9 JUDGE PLAINE: Was he also president?

10 THE WITNESS: He was president and there were
11 several other employers present, I just don't remember.

12 JUDGE PLAINE: Were they members of the
13 association?

14 THE WITNESS: Yes.

15 JUDGE PLAINE: When did the meeting take place
16 did you say?

17 THE WITNESS: Approximately the -- I think it
18 might have been the 8th of December.

19 JUDGE PLAINE: '75?

20 THE WITNESS: '75, correct.

21 JUDGE PLAINE: Continue.

22 Q (By Mr. Edelman) Can you describe what took
23 place during the course of this meeting?

24 A The purpose that counsel for the association
25 and the president and its members that were present

1 that day was to tell us that they cannot afford
2 to pay the increase, January 1, 1976 and that we must
3 do something about it and we have to work out something.

4 We have to use our good offices to, if necessary,
5 send telegrams or whatever have you to the different
6 legislators on behalf of the nursing home industry,
7 how it would affect the nursing home care and how
8 it would affect the jobs of the employees of these
9 facilities and on their request, I did thereafter send
10 out telegrams to different legislators and the governor
11 telling him the impact it would have in the event that
12 there would be no payment of the 1976 increase.

13 Q Who was the spokesman for this group if any?

14 A Well, I would say that the main spokesman was
15 Mr. Cutler and Mr. Reier the attorney for the
16 association.

17 Q In the course of their conversation did they
18 indicate why they would be unable to comply with the
19 '76 increases?

20 A They were referring to either the law that had
21 passed or it was about to be passed, the freeze on
22 Medicaid payments and that it would be virtually
23 impossible for them to pay it and I sort of turned
24 a deaf ear on it and I said, no way, we negotiated this
25 contract in good faith.

1 We are not asking you for any more and you
2 cannot ask us for any less. I told them we took 20
3 some hours to negotiate that contract, that's what it is
4 and that's what it will have to be and they said, you
5 are going to close down the homes and I said, I don't
6 like to be intimidated about what they are going to do,
7 but, that's what it is.

8 That contract was negotiated and we expect you to
9 live up to it and that's my answer.

10 JUDGE PLAINE: Did you say they referred to a piece
11 of legislation or to an action by executive officials?

12 THE WITNESS: They said something about it was
13 being passed or it was the intent of the government
14 to pass the freeze on the Medicaid reimbursement, but,
15 it was referred to the Medicaid reimbursement, that
16 they no longer will have the reimbursement as set forth
17 and the governor is freezing the reimbursement rate.

18 Again, they requested if I would join with them
19 to send telegrams and participate to try to get the
20 governor and legislators to get off passing that bill
21 and I, as an obligation to our people diligently
22 honored that request and did send out telegrams to
23 all the legislators and the governor telling them as
24 to the impact it will have.

25 However, it didn't alleviate them and I told them

1 at that time it would not alleviate them of their
2 obligation of fulfilling their contract as they signed
3 and agreed to in December 1974.

4 Q (By Mr. Edelman) Did there come a time
5 when the association was not in compliance with the
6 1976 wage increases or other increases?

7 MR. REIER: Objection, it calls for a conclusion.

8 JUDGE PLAINE: Are there certain parts that are
9 objective?

10 MR. REIER: I think it should be rephrased.

11 MR. EDELMAN: I will rephrase the question, your
12 Honor.

13 Q Did there come a time when the association breached
14 its 1975 agreement?

15 MR. REIER: Objection, your Honor.

16 MR. EDELMAN: Well, I don't think we are trying
17 to get from this witness the legal conclusion that
18 I would make, your Honor.

19 I think we are trying to get an objective
20 factor, certain portions of the contract related to
21 wages and benefits and increases thereof were not
22 honored in the sense that they were not paid, your
23 Honor.

24 MR. REIER: Why doesn't general counsel ask the
25 question that way, whether at a particular time a certain

1 increase which under the contract were or were not
2 paid?

3 MR. EDELMAN: I have no objection to rephrasing
4 the question that way.

5 JUDGE PLAINE: All right.

6 Q Did there come a time when the association failed
7 to pay any of the increase provisions, wage increase
8 or other provisions concerning increased benefits in
9 1976?

10 MR. REIER: Objection for another reason.
11 Now the association does not pay wage increases.

12 MR. EDELMAN: And its members?

13 MR. REIER: Can I get the question now?

14 MR. EDELMAN: Mr. Reier, I will alternate that
15 any way you want. Now we are playing games with
16 semantics. (Phonetic)

17 Did the member pay the benefits that were
18 proposed to be paid in 1976.

19 A Wages and benefits?

20 Q Did they fail to pay any benefits in 1976?

21 A They did not pay the benefits that were due the
22 members that we represent, the members of the
23 association did not fulfill the obligation of the
24 agreement.

25 MR. REIER: Objection.

1 JUDGE PLAINE: Are we talking about all wages
2 and all benefits or are we talking about increases that
3 took effect in 1976?

4 THE WITNESS: We are talking about increases of
5 wages due January 1, 1976 and also an increase in sick
6 leave, I believe of one day and also a time and a half
7 day which was Decoration Day, that if an employee worked
8 on that day he was supposed to receive double time and a
9 half.

10 Time and a half plus his regular day's pay, that
11 was not lived up to.

12 Q I take it then that these increases that you have
13 just set forth were the increases that were supposed to
14 take effect beginning January 1, 1976 and were not
15 lived up to by the members of the association, is that
16 correct?

17 A That is correct.

18 MR. EDELMAN: I would like to have this document
19 marked as General Counsel Exhibit No. 9.

(General Counsel Exhibit No. 9
marked for identification)

21 Q I ask you to look at General Counsel Exhibit No. 9
22 for identification and identify it for us if you would.

23 A This is a telegram that was sent to us or a
24 typewritten -- I believe one of our secretaries took it
25

1 on the phone, it was sent to us by Bert Cutler,
2 Nassau County Association.

3 At the emergency meeting of this --

4 Q You don't have to read it.

5 JUDGE PLAINE: What's the date of it?

6 THE WITNESS: There is no date on the telegram,
7 but, it refers to an emergency meeting of the
8 association held December 14, 1975.

9 Q I take it you received it following your discussions
10 with Mr. Cutler and Mr. Reier?

11 A That is correct.

12 MR. EDELMAN: Perhaps Mr. Reier has knowledge of
13 the date the telegram was sent?

14 MR. REIER: This may have been transmitted over
15 the phone.

16 THE WITNESS: I believe I said that.

17 MR. EDELMAN: Do you have the telegram?

18 MR. REIER: Yes.

19 (Hanging)

20 MR. EDELMAN: This is the telegram that was sent.
21 Perhaps I can withdraw the exhibit and could we mark
22 the telegram as General Counsel Exhibit No. 9?

23 JUDGE PLAINE: Yes, you can. If the witness
24 is prepared to identify it as the telegram that he
25 received.

MR. EDELMAN: Can we get a stipulation as to this?

MR. REIER: Yes.

MR. EDELMAN: This was sent on what date?

MR. REIER: December 15th.

MR. EDELMAN: Will you please mark this as General Counsel Exhibit No. 9?

(General Counsel Exhibit No. 9
marked for identification)

Q Mr. DeLaurentis, I ask you to look at that, is that the telegram that you received from the association?

A I believe we received this by phone, whether we have a copy of this I don't know but, it is similar --

Q Can we get a stipulation by Local 1115 that that was the telegram that was sent?

A I believe this is authentic. I wouldn't doubt it.

MR. EDELMAN: Are you willing to stipulate to its admission?

MR. REIER: Stipulated.

MR. EDELMAN: I offer this in evidence, your Honor.

JUDGE PLAINE: I take it it is stipulated into evidence as General Counsel Exhibit 9?

MR. EDELMAN: Yes.

JUDGE PLAINE: Please mark General Counsel Exhibit 9 in evidence.

(General Counsel Exhibit No. 9
marked in evidence)

Q (By Mr. Edelman) I direct your attention to
Huntington Nursing Home.

Did Huntington Nursing Home pay the increases
that were due under its collective bargaining agreement
with respect to January 1976?

A No, it did not.

Q Can you tell us what increases it failed to pay?

A It failed to pay the increases due January 1, 1976
within the blue collar workers plus sick leave increase.

Q Wages?

A Wages, an increase in sick day, also an increase
in double time and a half for Decoration Day, plus
they owed sick leave money due for the year 1975 and
that was not paid in full.

Also there were increases due to the unit that
came into effect September or which was stipulated to
in September 10, 1975 and there was a lot of retroactive
money due to some of the categories in that stipulation
which I haven't got even the exact amounts at this time.

MR. EDELMAN: I would like to mark this as General
Counsel's Exhibit No. 10 for identification.

(General Counsel's Exhibit No. 10
marked for identification)

Q (By Mr. Edelman) I would ask you to look at

1 General Counsel's Exhibit 10 and ask you if you
2 recall receiving that mailgram in connection with
3 Huntington?

4 A Yes, I did.

5 MR. EDELMAN: I would show this to counsel for
6 Huntington and ask if we can stipulate to the admission
7 of that document.

8 MR. REIER: So stipulated.

9 JUDGE PLAINE: What is the date, counsel?

10 MR. EDELMAN: 12/19/75.

11 Can we get a stipulation with respect to General
12 Counsel Exhibit No. 10 which is Huntington?

13 MR. REIER: Yes.

14 JUDGE PLAINE: In evidence is General Counsel Exhibit
15 No. 10.

16 (General Counsel Exhibit 10 marked
17 in evidence)

18 Q (By Mr. Edelman) Directing your attention to
19 Carrillon, did Carrillon House and Nursing Home H.R.F.
20 pay the increases that were due January 1, 1976 under
21 the collective bargaining agreement between Carrillon
22 and the union?

23 A No, it was not paid.

24 Q What increases specifically were not paid?

25 A The wage increase, the extra sick day, the time

1 and a half for Decoration Day for anyone that worked
2 that day.

3 Q When you talk about the wage increases in
4 connection with Carrillon and with respect to the
5 association and its members and with respect to
6 Huntington, you are talking about all of the contracts
7 that you have for the respective units with these
8 respective employees, I take it?

9 A That's correct.

10 MR. EDELMAN: I would like to mark this as General
11 Counsel Exhibit No. 11 for identification.

12 (General Counsel Exhibit 11 marked
for identification)

13 Q I ask you to look at General Counsel Exhibit No. 11
14 and ask you if you received that mailgram from
15 Carrillon?

16 A (Witness examines document)

17 Q It is dated 12/17/75.

18 A I did.

19 MR. EDELMAN: Can we stipulate with respect to
20 this document?

21 MR. REIER: So stipulated.

22 MR. EDELMAN: I would offer General Counsel Exhibit
23 11 in evidence.

24 JUDGE PLAINE: In evidence is General Counsel
25

1 Exhibit No. 11.

2 (General Counsel Exhibit No. 11
3 marked in evidence)

4 JUDGE PLAINE: I take it that also announced the
5 suspension of increases, is that correct?

6 MR. EDELMAN: That's correct, your Honor.

7 Q (By Mr. Edelman) I direct your attention to
8 Hudson View Nursing Home and Hudson View Manor Inc.
9 and ask you with respect to both of these establishments
10 did these two establishments pay the increases due
11 under the collective bargaining agreement with the
12 union due on January 1, 1976?

13 A No, they did not.

14 Q Now, with respect to the nursing home Hudson View
15 Nursing Home, what increases did they fail to pay on
16 January 1?

17 A Increases that were due January 1, 1976.

18 Q Which increases, wage increases or what?

19 A Wage increases and I haven't got the agreement
20 in front of me, there might be other fringes due,
21 I am not sure.

22 Q If I should give you the agreement, can you
23 refresh your recollection by looking at the agreement?

24 A Yes.

25 JUDGE PLAINE: Off the record.

1 (Discussion off the record)

2 JUDGE PLAINE: Back on the record.

3 Q (By Mr. Edelman) Mr. DeLaurentis, have you
4 looked at the agreement?

5 A Yes, I have.

6 Q Can you tell me with respect to Hudson View Nursing
7 Home what if any increases were not paid on January
8 1, 1976?

9 A Wages for one and a double time and a half day
10 which is Decoration Day.

11 Q Those constitute the increases that were not paid
12 by the home?

13 A Yes.

14 Q With respect to Hudson View Manor, can you tell us
15 what if any increases were due on January 1, 1976
16 and were not paid?

17 A Wages and Decoration Day which is double time and
18 a half.

19 Q Those constitute the sum and total of the
20 increases that were not met?

21 A That's correct.

22 MR. EDELMAN: I would like to move this document
23 marked General Counsel Exhibit No. 12 for identification
24 in evidence.

25 JUDGE PLAINE: There being no objection General

1 Counsel Exhibit No. 12 is received in evidence.

2 (General Counsel Exhibit No. 12
3 marked in evidence)

4 Q (By Mr. Edelman) Mr. DeLaurentis, would you
5 look at General Counsel Exhibit No. 12 and I ask you if
6 you can identify that please.

7 A Yes.

8 Q Can you tell me what that is please?

9 A This is a letter sent to me by Hudson View.

10 Q That's the nursing home on behalf of the home and
11 the manor?

12 A Yes.

13 MR. EDELMAN: Can we stipulate that that was the
14 letter sent?

15 MR. KAUFMAN: So stipulated.

16 MR. EDELMAN: I would offer General Counsel Exhibit
17 No. 12 in evidence.

18 JUDGE PLAINE: General Counsel Exhibit No. 12 is
19 in evidence.

20 (General Counsel Exhibit No. 12
21 marked in evidence)

22 Q I direct your attention to St. James Home and
23 St. James Plaza and ask if there were any increases by
24 the home or by the plaza due on the 1st of January 1976
25 which were not met?

1 A The home and the plaza did not meet the
2 obligation of the increase in wages that were due on
3 January 1, also a sick day, double time and a half day
4 for anyone that worked on Decoration Day.

5 Q With respect to the home and plaza, when we talk
6 about increases that were not met, we are talking
7 about increases in all of the agreements between that
8 particular home or respondent and the union, is that
9 correct?

10 A Yes.

11 Q When you say with respect to St. James Home and
12 St. James Plaza, that they failed to meet the wage
13 increases and extra sick day and Decoration Day, you are
14 talking about all of the agreements that the union has
15 with the home and the plaza?

16 A Yes.

17 Q That call for such an increase?

18 A Yes.

19 Q And this also is equally true, I take it, of
20 Hudson View Manor and Carrillon and Huntington and the
21 association and its members as well?

22 A Yes.

23 Q With respect to the particular increases that
24 they failed to meet, it would relate to all of the
25 contracts?

1 A Correct.

2 Q Did there come a time when you received any
3 communication from St. James Home and St. James Plaza
4 to the effect that they were not going to pay the
5 increases due?

6 A Yes.

7 MR. EDELMAN: Can we stipulate?

8 MR. HULL: So stipulated.

9 MR. EDELMAN: I would like to mark the following as
10 General Counsel Exhibit No. 13 and 14 for identification.

11 (General Counsel Exhibit No. 13
12 and 14 for identification)

13 MR. EDELMAN: Let the record reflect that General
14 Counsel Exhibit No. 13 is with respect to the plaza
15 and General Counsel Exhibit No. 14 is with respect to
16 the home.

17 Are we stipulating to that?

18 MR. HULL: I am stipulating that they were sent to
19 the union.

20 Q Did you receive this?

21 A Yes.

22 JUDGE PLAINE: Please give me the date on 13 and
23 the date on 14.

24 MR. EDELMAN: On 13, your Honor, the date is
25 December 16th and the same is true for Exhibit 14.

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JUDGE PLAINE: These purport to suspend the contract increases beginning of '76?

MR. EDELMAN: For St. James Nursing Home and St. James Plaza.

JUDGE PLAINE: These will be in evidence as General Counsel Exhibit No. 13 and General Counsel Exhibit No. 14.

(General Counsel Exhibit 13 and 14 marked in evidence)

MR. EDELMAN: Let's mark these as General Counsel Exhibit No. 15 and 16.

(General Counsel Exhibit 15 and 16 marked for identification.)

Q Mr. DeLaurentis, did there come a time when you received letters from Central Island Nursing Home and South Shore Nursing Home, members of the association?

A Central Island South Shore?

Q Yes.

A Yes.

Q Are those the letters, General Counsel Exhibit No. 15 and 16 that you received?

A Yes.

MR. EDELMAN: I move the documents be admitted, your Honor.

MR. REIER: No objection.

JUDGE PLAINE: Their date counsel is what?

1 MR. EDELMAN: For Central Island Nursing Home
2 December 16th and South Shore Nursing Home also
3 December 16, 1975 and they too are the same, the same
4 in effect as all the other letters and mailgrams.

5 JUDGE PLAINE: All right.

6 MR. EDELMAN: Sir, we have those admitted, I take it?

7 JUDGE PLAINE: General Counsel Exhibit No. 15 and
8 16 will be admitted in evidence.

9 (General Counsel Exhibit 15 and 16
10 marked in evidence)

11 Q Mr. DeLaurentis, with respect to Daleview Nursing
12 Home, has Daleview, which is a member of the association,
13 made any payments in connection with the --

14 MR. REIER: Objection, I think at the outset it
15 was established it was not a member of the association
16 at the time of this hearing and prior thereto.

17 Q Within the terms of the stipulation as stipulated
18 with respect to Daleview which was a member of the
19 association at that particular time, have they made
20 payments of the increases due under the terms of the
21 1976 or under the '75 agreement?

22 Have they made payments due in 1976?

23 A Yes, they did make payments with the exception of
24 a partial retroactive money that was due and payable
25 this Friday which I was told by counsel for Daleview and

1 also by the area director, Mr. Juvall this will be
2 fulfilled this Friday.

3 They are paying the increase as it calls for in
4 the association contract that they will obligate it
5 under prior to them leaving the association.

6 MR. KAUFMAN: Objection, may all that be stricken.

7 JUDGE PLAINE: Let's have the reporter repeat
8 the last answer.

9 (Last answer repeated)

10 MR. HULL: Did they or did they not pay certain
11 increases was the question.

12 It doesn't call for a speech as to what their
13 extent or what the nature of their obligation was.

14 JUDGE PLAINE: I thought it was a complete answer.

15 MR. EDELMAN: Inasmuch as asking the question, I
16 think it is for me to judge whether it is responsive
17 to my question.

18 JUDGE PLAINE: He has the right to object,
19 continue.

20 MR. REIER: I am not certain that's the nature of
21 law, your Honor.

22 JUDGE PLAINE: I think the answer was responsive.
23 If I understand this, the import, it would appear
24 that Daleview is not in default except with the
25 possibility that --

1 MR. EDELMAN: I am going to explore this
2 further, if I may, your Honor.

3 JUDGE PLAINE: Continue.

4 Q (By Mr. Edelman) The increase with Daleview
5 was due on what date?

6 A It was due January 1, 1976.

7 Q Was it made? Did they pay the increases due in
8 wages and other increases due on January 1, 1976?

9 A They did not make it on January 1, 1976, but,
10 they have made it as of a month ago, at least.

11 Q Retroactive?

12 A Retroactively and there is partial retroactive
13 money due.

14 The increase is in effect now, they are receiving
15 the increase, the workers are receiving the increase.

16 The balance retroactive money is due this Friday.
17 I have been assured by counsel for Daleview that it
18 will be paid and the area director has told me, Mr.
19 Juvall, that it will be paid Friday, that's the extent
20 of it that I know of.

21 Q The question is: What increases did Daleview fail
22 to make on January 1?

23 A The wage increase of \$9 and a sick day, additional
24 sick day that was due on January 1 and a time and a
25 half plus their regular scale of wages which is a double

1 time and a half for Decoration Day which they failed
2 to pay but since then they have agreed to pay it,
3 have paid the increase and it is now, actually, being
4 made, the sick day is paid.

5 It's added to the sick days they have and the
6 double time and a half for which one working on
7 Decoration Day has been given.

8 Q Now, with respect to Daleview, when did they begin
9 to make this payment retroactively?

10 A May we go off the record?

11 JUDGE PLAINE: Off the record.

12 (Discussion off the record)

13 JUDGE PLAINE: Back on the record.

14 A June 11. They received their first payment in --

15 JUDGE PLAINE: Off the record.

16 (Discussion off the record)

17 JUDGE PLAINE: Back on the record.

18 A They paid the increase as of May 1. They paid the
19 retroactive money due from January 1 half of it on
20 June 11 and the other half will be paid on this Friday
21 which I believe is the 23th.

22 Q Of June?

23 A Of June.

24 MR. EDELMAN: I have no further questions.

25 JUDGE PLAINE: Now, I take it you have no further

Exhibit

1 aspect of 8A1 or 8A5 doesn't mean that you haven't
2 violated some, and so at this point all the inference
3 are in favor of the general counsel.

4 He is on the verge of proving a prima facie case
5 although we have not completed with his first witness.

6 I don't think at this point that this is the time
7 or even the instance for a motion to dismiss.

8 MR. REIER: It was not my intention to be
9 premature but it was indicated to me that there was a
10 single witness and I assumed that at the conclusion of
11 this witness I assumed that general counsel's case has
12 been completed.

13 If the motion was premature I would request to
14 renew it at the appropriate time.

15 JUDGE PLAINE: Is there any cross-examination?

16 MR. REIER: Yes.

17 MR. HULL: Yes.

18 MR. KAUFMAN: Yes.

19 JUDGE PLAINE: Who is going first, you Mr. Reier?

20 MR. REIER: I guess so.

21 CROSS EXAMINATION

22 Q (By Mr. Reier) Mr. DeLaurentis, you testified
23 on direct examination that you have been engaged in
24 collective bargaining with the association and other
25 respondents for some period of time, is that correct?

1 A Yes.

2 Q Now, prior to 1976 were there any increases
3 which were deferred, not paid on the date due by any
4 of the respondents in this proceeding?

5 A Prior to '76 within this agreement?

6 Q At any time prior to 1976.

7 A There might have been.

8 Q Well, you testified you engaged in collective
9 bargaining, do you also, Mr. DeLaurentis, administer
10 the contracts?

11 A Administer them?

12 Q Do you have dealings with the employer concerning
13 the implementation of the agreements?

14 A At times.

15 Q Now, would you search your recollection and answer
16 whether on a prior occasion provisions of the agreement
17 or any agreement between your union and any of the
18 employers engaged in this proceeding have not been
19 implemented on the dates due.

20 A There might have been other times on the dates due
21 but they made them good.

22 Q They made them good?

23 A Yes.

24 Q Do you recall that any of the prior occasions
25 how much time elapsed between the time when the obligation

1 arose under the agreement and the implementation
2 of those provisions?

3 A No, I do not.

4 Q Would it be fair to say there were occasions
5 when several months elapsed between when an increase
6 was due and when it was paid?

7 A I really couldn't tell you.

8 MR. EDELMAN: I want to object at this point your
9 Honor, on the ground that whether or not these things
10 as Mr. Reier seems to imply took place is irrelevant.

11 There may have been unfair labor practices
12 committed by various other employees and the union did
13 not file charges.

14 It is not relevant as to what took place in this
15 case.

16 JUDGE PLAINE: What do you say?

17 MR. REIER: There has been prior occasions when
18 increases were not implemented on the due dates because
19 the parties, that is, the employers were waiting
20 adjustments in their reimbursement rates.

21 I said, in my motion that was prematurely made,
22 that if these employers get a proper reimbursement rate,
23 they stand ready to honor the commitment in the
24 collective bargaining agreement as they have done in
25 the past.

1 In the past, the union has recognized that
2 the employer must await the implementation of the
3 revision of a reimbursement rate before provisions of
4 the contract were implemented.

5 JUDGE PLAINE: Why don't you narrow your questions
6 down then to any specific instance that you think
7 demonstrates this.

8 Q (By Mr. Reier) Mr. DeLaurentis, do you recall
9 the interest (phonetic) that was due the employees
10 under the collective bargaining agreement on July 1, 1975?

11 A Yes.

12 Q Do you recall when that increase was paid, the
13 July 1, 1975 increase?

14 A I believe it was paid in more instances than
15 one immediately and in some instances it may have been
16 paid a week or two weeks later, but it was paid.

17 Q Mr. DeLaurentis, do you know of any instance
18 where it was paid months later?

19 A There might have been. I haven't got it on my
20 fingertips.

21 Q Do you know of any instance where the increases
22 were paid or a retroactive part of those increases
23 were paid over a period of time, over and extended
24 period of time?

25 A In July of 1975?

1 Q July, 1975 increase.

2 A There might have been, yes.

3 Q Now, Mr. DeLaurentis, do you recall the increases
4 due under the collective bargaining agreement of
5 July, 1974?

6 A Are you referring to -- July 1974?

7 There was an increase due and the workers received
8 it.

9 Q Did any of the respondents in this proceeding
10 delay the implementation of that increase?

11 A They might have.

12 Q Did any of those delays to the best of your
13 recollection extend over a period of time?

14 A Might have, I really haven't got it on my fingertips
15 again.

16 Q Do you recall in that year or 1975 whether the
17 delay in the implementation of those provisions of
18 the collective bargaining agreements calling for a
19 wage increase resulted from the employer's request that
20 the union wait because of a revision in their Medicaid
21 reimbursement rates?

22 A I don't recall for what reason if there was one
23 but I do recall there might have been some delay in
24 the payments, but there was never a delay of six months
25 and it was never unilaterally denied that the payments

1 were not made such as the telegram received by
2 this union.

3 MR. PEIER: Your Honor, would you please caution
4 the witness to respond to the question only?

5 JUDGE PLAINE: I thought the question was related
6 to cause. It isn't just enough to indicate the delay,
7 the only reason you are allowed to go into this area
8 is to indicate some cause that might parallel the cause
9 in this case.

10 If somebody happened to be short of some funds
11 because of somebody stealing a little money or something
12 like that, that isn't obviously the same kind of
13 situation we are talking about, so I think the witness
14 is saving time in a way by trying to get to the core
15 of what you are asking.

16 I regard his answer as proper.

17 Continue.

18 Q Mr. DeLaurentis, are you familiar at all with
19 the Medicaid reimbursement rates?

20 A I am familiar with it but I am not an expert
21 on it.

22 Q Now, how long has your union been engaged in
23 the organization or representation of employees in
24 the nursing home field?

25 A I would say since 1962.

1 Q Since 19 --

2 A Or prior.

3 Q Have you been involved as an officer of the union
4 since that period?

5 A Either an officer or a representative.

6 Q During that entire period from 1962 to the present
7 has there ever been a Medicaid freeze to your knowledge?

8 A Not to my knowledge.

9 Q You would know about it if there was one, wouldn't
10 you?

11 A I might have.

12 Q Now, Mr. DeLaurentis, is this a statement that
13 you gave to the agent for the National Labor Relations
14 Board in the course of this proceeding?

15 A (Witness peruses document)

16 Q Would it help if you look at the original?

17 A It would be the same. This is a statement that
18 I gave.

19 Q Did you give any other statement to Mr. Edelman
20 or any other board agent?

21 A No.

22 Q Now, Mr. DeLaurentis, in your statement make
23 reference to a meeting held during the week of
24 December 8 in your office with certain representatives
25 of the association, including the president of the

1 association and counsel for the association were
2 present, is that correct?

3 A That's correct.

4 Q Now, do you recall during that meeting that the
5 parties or the representatives of the association
6 discussed with you the impact of the Medicaid freeze
7 on their ability to meet the forthcoming increases
8 and other fringe benefits under the agreement?

9 A Yes.

10 Q Do you recall that the representatives of the
11 association suggested some alternatives to you as a means
12 of defraying the cost of the forthcoming increases?

13 A There were many suggestions made at that meeting
14 and I responded to them by saying we are not asking you
15 for any more and we don't expect you to pay any less
16 than what we negotiated in December 1974, that's my
17 response to the group that was there.

18 Q Would you characterize, Mr. DeLaurentis, that
19 meeting in your office as a negotiation?

20 A Absolutely not.

21 Q Well, it was just a discussion?

22 A A discussion for you and your people to get me to
23 relinquish the rights to a contract that we negotiated
24 in good faith, December of 1974 and to give away what
25 we negotiated for our people or to delete or bargain off

1 which I refused unilaterally.

2 Q Do you recall, Mr. DeLaurentis, that during the
3 course of the discussions in your office the
4 representatives of the association advising you that
5 they were prepared to implement all of the terms and
6 provisions of the collective bargaining agreements
7 if the union would consent to a reduction in staff so
8 that sufficient savings would be generated to defray the
9 cost of these benefits?

10 A You might have said that and I said no way are
11 you going to diminish the work force that the people
12 had in their facilities over the years and what the
13 contract calls for, that you cannot reduce or you cannot
14 lay off so long as someone else picks up the work of
15 the one that you lay off and for the record, you have
16 unilaterally laid off many people within the
17 association and still with that, although we didn't
18 accept that, you already have laid off people and it
19 didn't defray the cost.

20 If it did, it is going south, you didn't pay
21 it to the workers.

22 MR. REIER: Your Honor, would you admonish the
23 witness?

24 JUDGE PLAINE: I think you have given a response
25 Mr. DeLaurentis.

1 It isn't necessary to go beyond then what
2 is asked for.

3 Let's hear the next question.

4 Q Mr. DeLaurentis, you admit, during the course of
5 these discussions that took place in your office
6 during the week of December 8, the representatives of
7 the association suggested to you that as a means of
8 defraying the forthcoming increase in wages and fringe
9 benefits which were due in January '76 that if the union
10 consent to a layoff of employees the employers were
11 prepared to implement those provisions of the collective
12 bargaining agreement?

13 A Absolutely not.

14 JUDGE PLAINE: I think there is a mistake in the
15 question. I think the witness was thrown by the
16 question. You are simply repeating, counsel, what you
17 asked him, something you asked him previously namely
18 was he asked to diminish the work force in order to
19 provide a means of meeting the obligation and he already
20 denied that.

21 MR. REIER: He denied that they would consent to it.

22 JUDGE PLAINE: Yes, that's true. He didn't say
23 that he wasn't asked. He did say that he denied agreeing
24 to it and he gave his reason, so I think you are kind
25 of repeating it and this is what threw him off in trying

1 to respond.

2 Why don't you try a fresh question?

3 Q Mr. DeLaurentis, you were present in the hearing
4 room, were you not, when I made an opening statement
5 with respect to the position of the respondent
6 association earlier this morning?

7 A I believe I was, yes.

8 Q You heard me, in my remarks, state that the
9 union, sent telegrams to members of the legislature
10 and members of the executive branch of the government
11 urging that the freeze be lifted?

12 A Yes, I heard you say that.

13 Q Now, Mr. DeLaurentis, I ask you to look at the
14 statement that you gave to the general counsel and
15 ask where in that statement you make any reference to
16 the fact that the request to send those telegrams was
17 inspired by the employers or any member of the employer
18 group?

1 A It is not in here at all.

2 Q So that when you gave this statement to the General
3 Counsel you didn't think that was important, the reasons
4 for that you sent these telegrams concerning the Medicare
5 freeze?

6 MR. EDELMAN: I object to the question as irrelevant,
7 Your Honor.

8 JUDGE PLAINE: More than that, there was testimony
9 that he gave this morning that he did send these telegrams.

10 MR. REIER: Your Honor, our position has been
11 consistent throughout that independently the union
12 recognized the importance of an adjustment in the Medicare
13 reimbursement rates so its members could be paid and
14 did not do so at our instigation.

15 MR. EDELMAN: It is irrelevant as to what outside
16 means the union may seek to secure payment, that is not
17 relevant to the facts of whether respondent violated
18 the act here.

19 In effect, Mr. Reier seeks to penalize the
20 union in this case because it may be seeking any avenue
21 that is possible to see that it's employees gets paid
22 under the contract and I find that to be irrelevant.

23 MR. REIER: It has been our position all along
24 and as I read to you from the statement of the Commissioner
25 from the State of New York that in collective bargaining

1 in the health care industry, in this metropolitan area,
2 there is a understanding between the parties that the
3 implementation of wage increases, fringe benefits increases
4 is contingent upon a pass through upon third party pairs.

5 By this line of questioning I am trying to elicit
6 the fact that the union recognized that the necessity
7 of a pass through by third party pairs was indispensable
8 through the provision of the bargaining agreement and
9 therefore we did not violate the agreement because there
10 is at all times a tacit understanding that the pass through
11 by third parties payers is a necessary part of our
12 negotiations.

13 JUDGE PLAIN: The proof ^qthat the present time,
14 based on the only witness we heard, is that he was asked
15 to do this, so, how do you come out with implicit under-
16 standing?

17 You are not proving it by this witness.

18 MR. EDLEMAN: I would submit anything that the union
19 does on its own attempt to secure the payment of a contract
20 that it considers breached by the employer should not be
21 held against him in connection with an unfair labor
22 practice charge.

23 It is the union's right to take all means possible
24 to insure that the contracts were lived up to and they
25 took it upon themselves where they had no obligation to

1 do so to contact any State or Federal authorities.

2 JUDGE PLAINE: I might well agree with you, but, I
3 don't think I need to.

4 This witness has taken the directive position that
5 he did what he did at the request of the employers.

6 If there is something different --

7 THE WITNESS: Your Honor, may I expand on that?

8 JUDGE PLAINE: If counsel wants to hear you.

9 I am perfectly satisfied.

10 THE WITNESS: I would like to expand on it.

11 MR. REIER: You will have an opportunity to do so.

12 JUDGE PLAINE: General Counsel will have redirect
13 if he needs it.

14 Continue.

15 Q Mr. De Laurentis, do you recall when you filed a
16 charge against the employer in this proceeding?

17 A I don't recall the exact date, it was made up and
18 I signed it.

19 Q Do you recall whether the charge was filed before
20 or after the telegrams that you sent off to the legislators?

21 A I would have to look at the document to recall the
22 date.

23 Q Mr. DeLaurentis, I show you a copy of a mailgram
24 dated December 17, 1975, Respondent Exhibit No. 1 for
25 identification and ask whether you caused this to be sent

1 That's part of your defense.

2 If you have proof to that effect, I would like to
3 listen to it.

4 Let's continue.

5 Q (By Mr. Reier) Mr. DeLaurentis, do you recall
6 participating in a meeting in Albany on January 26th of
7 this year?

8 A I do.

9 Q Do you recall whether the following named individuals
10 were present:

11 Commissioner Whalen who is the ^{Health} ~~house~~ commissioner
12 of the State of New York?

13 A I do.

14 Q The then Commissioner Berger of the Department of
15 Social Services of the State of New York?

16 A That's correct.

17 Q Dr. Sysciro who is a deputy commissioner for the
18 Department of Health for the State of New York?

19 A Yes.

20 Q Commissioner Hacker of the Federal Mediation
21 Conciliation Service?

22 A Yes.

23 Q Mr. Shalang counsel to the Department of Social
24 Service for the State of New York?

25 A I really don't know which one was Mr. Shalang, but,

1 I was at a meeting in Albany as you just stated with the
2 names that you just called off.

3 Q Were there also present at that meeting Mr. Cutler,
4 president of the Nassau County House Facilities Association?

5 A Yes.

6 Q Mr. Kemullson?

7 A Yes.

8 Q Mr. Circus of Franklin Park Nursing Home?

9 A Yes.

10 Q Mr. Birnbaum of that nursing home?

11 A Yes.

12 Q Messrs. Fred and Joe Krillos of the Carrillon Nursing
13 Home?

14 A Yes.

15 Q Myself?

16 A Yes.

17 Q Did you not at that meeting, Mr. DeLaurentis, urge
18 the Department of Health and Department of Social Welfare
19 to lift the Medicaide freeze because it was having an
20 adverse effect on your members?

21 MR. EDELMAN: If we are going to go into an area
22 where the union made an attempt, be it not through a
23 letter but at a meeting to have the freeze lifte, I am
24 going to object on the grounds that it is irrelevant as
25 the same grounds that the letters are irrelevant.

1 Do you want to introduce evidence to indicate at
2 this meeting there was a waiver by the union of it's
3 rights under the contract or some evidence that the union
4 was now willing to condition it's right under the contract
5 to collect wages on the release of the Mediacade freeze
6 then, I will withdraw my objection, but, if it is going to
7 be another attempt to show what effort the union made to
8 have the freeze lifted, I am going to object.

9 JUDGE PLAINE: I think the answer to the question
10 yes or no is a proper basis for proceeding with the
11 questions along the line that you are objecting to, but,
12 if there is not going to be any witness I will allow the
13 witness to answer yes or not.

14 THE WITNESS: Would you repeat your question?

15 JUDGE PLAINE: Did you make such a request?

16 THE WITNESS: No.

17 The request was made by Commissioner Hacker of the
18 Federal Mediation and Conciliation Service when there
19 was a threat of a strike on the 21st at the Prince George
20 Hotel.

21 He made the call to Albany and he was the one and
22 we have newspaper clippings to prove it and we can get
23 Mr. Hacker down here to prove it.

24 He stepped in and asked the commissioners to meet
25 because there was going to be a catastrophe if there was

1 going to be a strike and I obliged and I did everything
2 in my power to follow through and go to Albany and try
3 to get the freeze lifted but, no way did that relinquish
4 our rights to our contract continuously on and on and on.

5 I can go further with this Davidoff letter.

6 Mr. Cutler, the president of the association gave me
7 the name of the commissioner to send that letter to.

8 JUDGE PLAINE: I take it that your answer was yes
9 you asked at the request of someone else?

10 THE WITNESS: I don't like to be sanbagged into
11 anything, Your Honor.

12 MR. EDELMAN: I am going to request that the court
13 instruct counsel to limit his questions on cross-examination
14 or to refrain from asking questions in the same area.

15 We have been at this for an hour and the questions
16 have been ruled on time and again to be irrelevant and
17 he is wasting time.

18 If you have another area on cross-examination that
19 you want to explore, you certainly have the right to do
20 it, but, I think on this area you realize what your
21 questions are, and you keep asking them over and over and
22 over again with respect to one letter, with respect to
23 another letter, and with respect to a meeting.

24 JUDGE PLAINE: I have understood the witness' reply
25 to be that yes, he asked at the request from someone at

1 the Federal Mediation Conciliation Service.

2 Continue.

3 MR. REIER: I am not sure of where we are.

4 JUDGE PLAINE: I think you have gotten an answer to
5 your question namely that he did make a request, but did
6 it on the basis of a Federal Mediation and Conciliation
7 Service officer asked that he make such a request.

8 THE WITNESS: I didn't make the request, but, I
9 obliged them by going.

10 MR. REIER: Or obliged what?

11 THE WITNESS: Obligated the Federal Mediator to try
12 to resolve it and go to Albany.

13 MR. EDELMAN: Off the record?

14 MR. REIER: I am at a loss.

15 I don't know whether the witness indicated that he
16 attended the meeting because he was urged by the Federal
17 Mediator or he made certain requests of the commissioner
18 and other representatives of the State Department of
19 Health and Social Welfare present there concerning the
20 Medicaid freeze at the instigation of --

21 JUDGE PLAINE: I understood him to say that yes, he
22 obliged the mediation service by making the request to
23 the State officials.

24 Now, let's continue.

25 MR. REIER: I have no further questions, Your Honor.

JUDGE PLAINE: Let's not argue.

Let him answer.

THE WITNESS: You are correct in saying that I have knowledge which was brought to my attention throughout the years that Medicaide has a function with the nursing home, that is purely understood, so is Medicare and private patients.

It was requested by me --

Q I am not concerned with that.

A Everyone knows there is Medicare and Medicaide.

Q I am concerned with St. James Nursing Home.

I am concerned with your knowledge of the program and will you answer this yes or no?

There have been prior projects with 1115 with homes I have been negotiating with and other counsel have been negotiating with which you permitted a clause subject to State reimbursement rates?

A Absolutely not.

Q Never?

A Subject to State reimbursement on what?

MR. EDELMAN: I am going to object to this.

I am going to object to counsel not giving the witness a chance to answer.

He has continuously interrupted the witness.

MR. HULL: I will be more than glad to give him an

JUDGE PLAINE: All right.

Q You have present knowledge predicated upon all the testimony you gave in your direct case that there is a distinction in the State of New York nursing homes?

A Please slow down, I am not as rapid as you are.

I want to digest the question.

Q I only have a few questions, it is late, and if we can get to them, I will be finished.

JUDGE PLAINE: Please speak a little more slowly.

Q My question is; do you have personal knowledge between the difference of Medicaide financial reimbursement for nursing homes as compared to a private patient, yes or no?

A I don't understand the question.

Q Well, do you understand a nursing home that has private patients can charge pretty much what they want to for that patient?

A I assume so, yes.

Q You understand the patient in a nursing home, a Medicaide patient is limited to the charge fixed by the State of New York?

A Depending on which home it is, yes.

Q In your prior dealings with nursing homes, you are aware, are you not that there are appeals filed once a rate is set for Medicaide and individual home with whom

1 you have a contract requesting a higher rate predicated
2 upon a union contract negotiator?

3 A That could be the case.

4 Q As a matter of fact, isn't it true, sir, that in
5 1975 in the St. James Nursing Home there was several
6 months in which increases that were due were not paid
7 because they had an impending --

8 A Could very well be.

9 Q And the fact is they didn't pay it in January and
10 you received a letter from them -- by the way, that was a
11 letter addressed to you from St. James Nursing Home and
12 St. James Plaza?

13 A You are talking about 1975?

14 Q December 16th to be exact, that's Counsel's Exhibit
15 13 and 14.

16 A That isn't what you said.

17 Q That is what is introduced.

18 A May I see 13 and 14?

19 (Examining)

20 You asked another question, Mr. Hull.

21 Q Now, counsel for the Board has introduced as General
22 Counsel Exhibit 13 and 14, these are in evidence, would
23 you refer to the second page attached to both 13 and 14.

24 13 applies to St. James Plaza and 14 applies to St.
25 James Nursing Home.

1 that?

2 A There were several of them.

3 Q Now, you have also introduced copies of each and
4 every contract and I am concerned with the contracts
5 concerning St. James Nursing Home and St. James Plaza
6 and you testified on your direct that in 1975, pursuant to
7 questioning from counsel, there were no violations of
8 those contracts, is that correct?

9 A 1975?

10 Q Yes.

11 A There were no violations that weren't corrected.

12 Q To your knowledge, were there any violations of the
13 contract other than those things you have testified to,
14 namely that the employers did not give the wage increases
15 due January 1st, to your knowledge, have there been any
16 other violations?

17 A To my knowledge I cannot answer that because there
18 are day to day problems and grievances that are handled
19 by the representatives that take care of that facility.

20 Q You are familiar with Paragraph 7 of your contract,
21 are you not?

22 A I will look at that.

23 Q You wrote it, sir.

24 A I didn't write it, my counsel wrote it.

25 Q You are familiar that your contract has a no strike

1 clause in it?

2 A That's correct.

3 Q Not withstanding that, you filed a notice of strike --

4 MR. EDELMAN: Irrelevant, I object.

5 JUDGE PLAINE: I find this irrelevant.

6 MR. HULL: All right.

7 Q Now, you told us about spending approximately twenty
8 some odd hours negotiating a contract with Nassau County?

9 MR. REIER: I think the record indicate the last
10 negotiating session was twenty some odd hours.

11 Q How many negotiations were there?

12 A I don't know exactly.

13 Q Could you give us an approximation?

14 A Three, five.

15 Q Consisting of how many hours, approximately in your
16 opinion, you were part of that, weren't you?

17 A Yes.

18 Q Approximately how many hours?

19 A I really couldn't give you an honest guess.

20 Q Well, if I said it consisted of 48 or 50 hours,
21 would that be a fair statement?

22 A It could be.

23 Q That was accomplished in what month?

24 A Which?

25 Q The agreement with the Nassau Association.

1 A December.

2 Q In 1974?

3 A Correct.

4 Q And the agreement was subsequent thereafter signed?

5 A Yes.

6 Q Approximately when, what date, do you remember?

7 A No, maybe the contract will show it.

8 Entered into the 9th day of January.

9 Q Now, you had consummated a firm agreement with how
10 many homes in Nassau County?

11 A 17, 18, 19, I am not sure.

12 Q You referred -- you introduced into evidence a
13 contract executed between Local 1115 and Nassau, St. James
14 Nursing Home and St. James Plaza dated April 8th, by the
15 way, did you spend 50 hours negotiating with St. James
16 Nursing Home?

17 A I made that clear earlier.

18 Q Is it not a fact that once you had negotiated an
19 agreement with Nassau Nursing Home, your position at that
20 time was that the rest of the homes whose contract are
21 coming up to have them follow this contract?

22 There were no negotiations or clauses, were there
23 with St. James?

24 A One question at a time.

25 I will answer the first one.

1 You went into two questions.

2 One was that they had to what?

3 Q Let me ask the questions.

4 Did you spend 50 hours negotiating a contract with
5 St. James Nursing Home or St. James Plaza?

6 A No.

7 Q Each and every clause and the language of the
8 contract are negotiable items, are they not?

9 A Yes, they are.

10 MR. EDELMAN: I am going to object to the line of
11 questioning.

12 It appears to me counsel is attempting to show that
13 the union is in a sense bargaining in bad faith where
14 there is no charge being alleged.

15 JUDGE PLAINE: Will counsel please tell me where are
16 taking your questions to?

17 MR. HULL: It goes to one point, that they spent
18 time in negotiating an existing contract with the Nassau
19 Homes, my point is, which has been established, that St.
20 James Nursing Home and St. James Plaza did not have the
21 opportunity and right to sit down and negotiate their
22 own agreement as to clause by clause by clause.

23 I am submitting that this is an element that Your
24 Honor may take into consideration in making a general
25 determination as to validity of the union's claim at this

1 My only point in bringing this out is, as far as
2 Mr. DeLaurentis is concerned, is to establish one basic
3 element, to establish which I indicated previously, we
4 are dealing with a unique question.

5 Q When you had the meeting in December 15th, or
6 December 8th at which time you were advised that the homes
7 would not be able to honor the increases required by
8 January 1st, what did you do the next day?

9 A Many things.

10 Q About this, about that topic, did you do anything
11 the next day?

12 A I have no idea if I did or didn't.

13 Q You don't recall?

14 A I don't recall.

15 Q Did there come a time when you requested and you
16 were advised the inability was predicated upon financial
17 inability, correct?

18 A This was what I was advised by --

19 Q Did you at any time, sir, feel that you should as
20 a representative of all your employees make a logical
21 determination as to the validity of these statements?

22 MR. GREENSPAN: I object.

23 MR. HULL: Did you as for financial statements?

24 MR. GREENSPAN: I object.

25 JUDGE PLAINE: Just a minute.

1 MR. GREENSPAN: What the witness' feelings were on
2 a particular date, I don't think it is a proper question.

3 Perhaps the witness did something on that date,
4 maybe an inquiry would be proper, but, his feelings
5 about what it meant I don't think it is a proper avenue
6 of inquiry at this time.

7 MR. HULL: I'm sorry, I will rephrase that.

8 JUDGE PLAINE: Mr. Edelman?

9 MR. EDELMAN: I object.

10 I join in the objection of counsel for the bargaining
11 party.

12 I think it calls for a conclusion on the part of
13 the witness or for the operation of the witness' mind
14 and it is not really proper testimony.

15 JUDGE PLAINE: I thought the question was did he
16 make any inquiry.

17 MR. EDELMAN: Did he feel --

18 JUDGE PLAINE: That's the question?

19 Did he make an inquiry, is that right?

20 Q Did you make an inquiry?

21 A I don't recall whether I did or not the next day.

22 Q Did you ever make a request for financial statements?

23 A Now -- not when they were rolling in the money or
24 when they were losing money.

25 Q You would agree with me, sir -- you have how many

1 members in Local 1115 that are subject to the Nassau
2 County Nursing Homes?

3 A Approximately in the neighborhood of four to five
4 thousand.

5 JUDGE PLAINE: Does that include all of the homes
6 that are here?

7 THE WITNESS: Independents as well, maybe less.

8 Q That covers blue collar workers, LPN's and RN's?

9 A Yes.

10 Q Are you familiar or aware what the approximate
11 number of patients in nursing homes and RHF facilities
12 in Suffolk?

13 A If you take 150 times 20, you will have a number,
14 some have a hundred, some have 120, some have 200, some
15 have less.

16 Q You agree with me, sir, then that there exists a
17 real problem in this industry?

18 MR. GREENSPAN: I object.

19 JUDGE PLAINE: I don't think it is relevant.

20 Even I could recognize that there is a problem, but,
21 that doesn't mean it necessary takes care of this case.

22 Q You would agree with me with the general statement
23 that the problems of which you had been testifying to
24 here before us, namely the home is not giving the increases
25 January 1st is due primarily and in part to the whole

1 Q He did discuss other options, is that correct?

2 A Yes, but, I would like to bring them out.

3 Q If your counsel wants to, he can.

4 I just want you to answer my questions.

5 Isn't it true that you told Mr. Gordon that you would
6 not be interested in discussing any other options, that
7 the increases as stated in the contract would have to
8 be implemented?

9 A Correct.

10 Q Isn't it also a fact that told Mr. Gordon there
11 was no purpose in your getting together because your
12 position was not going to be changed on this?

13 A Correct.

14 Q Are you familiar with how Medicaid reimburses the
15 State?

16 Are you familiar that the Federal Government pays
17 50 percent of the Medicaid rates?

18 A I heard of that today and many times before that,
19 50 percent, 25 and 25.

20 Q So, you heard that before?

21 A Yes.

22 Q I would assume that as a vice president of labor
23 organization that deals in the nursing home field, it
24 would not be unusual that you would be familiar with that
25 fact, isn't that correct?

1 A It's correct.

2 I am familiar with it.

3 Q Isn't it also a fact that you testified there was
4 never a freeze in the Medicare rates, isn't it a fact that
5 in 1971 the Federal Government did in fact freeze the
6 Medicare rate?

7 A They had a freeze as far as wages throughout all
8 industries.

9 Q Now, that was to wages.

10 Didn't they also have a freeze on reimbursement?

11 A That was to all industries and what they did with
12 Albany --

13 Q I am not interested in an explanation.

14 A There was a freeze in the whole United States for
15 wages.

16 Q Isn't it a fact that when the freeze was removed,
17 nursing homes remained under that freeze even after the
18 rest of the United States as you classified it, had their
19 freeze removed, nursing homes still stayed under the
20 freeze?

21 A There were some businesses in the freeze that
22 remained.

23 Q Was nursing homes one of them?

24 A Might have been.

25 Q You don't know?

1 A I don't want to say yes if I am not positive.

2 Q Your answer is that you don't remember whether
3 nursing homes was part of that freeze?

4 A I know that there were many industries that remained
5 within the freeze after the freeze was lifted.

6 Q Let me ask you this, as a vice president of the
7 labor organization who is involved in the nursing home
8 industry during that time, were you also aware that the
9 Medicare rates, that the State was restricted from
10 increasing the Medicare rates to the homes because of the
11 wage stabilization act?

12 A They had to fall in line with the wage stabilization
13 act.

14 Q Isn't it also a fact that as a result of that, as
15 a result of the wage stabilization act, language was added
16 to the collective bargaining agreements saying that if
17 the Federal Government had put these controls on, that
18 money would not have to be put out?

19 A In what contract?

20 Q Let's start with 1971.

21 Was there such a clause in the contract?

22 A Might have been, I don't have it in front of me.

23 MR. REIER: So the record is clear, the Act is
24 Economical Stabilization Act.

25 Q You were not sure at this time whether the union
negotiated any clauses which prohibited or covered the

1 Economic Stabalization Act, is that your testimony?

2 A I am saying that I am not familiar because I haven't
3 got the document in front of me.

4 I know that our attorneys have given us language to
5 put into agreements that were signed during that period
6 that would put us in the right light and not violate the
7 law.

8 Q Do you know if that language was put in the Hudson
9 View and Hudson Manor contracts?

10 A It might have been.

11 Q What about the association contracts?

12 A It might have been.

13 Q Would it be correct in stating that in part, that
14 language said that if the Federal Government put restraints
15 on the wages of employees in any manner, then the
16 collective bargaining agreement would be negotiated as
17 to the effect of that?

18 A There was language given to us by our attorneys
19 which I am not going to quote because I don't have it in
20 front of me, all I know is thank God that was over.

21 Q All that language was over and done with?

22 MR. EDELMAN: I would object to any further going
23 into the area of what took place in connection with the
24 1971 wage price freeze.

25 It is different then the present freeze and if there

1 was something in the contract that was placed in to
2 accommodate the freeze, it is conceded evidently that it
3 is no longer in these contracts and certainly not in the
4 present contract, so, the situation in 1971 is clearly
5 not similar to the one we have before us.

6 MR. KAUFMAN: I am moving on, any way.

7 Q Now, let me ask you this:

8 To your knowledge, did the State of New York prior
9 to this year ever freeze the wages or -- not the wages,
10 but, did they ever freeze the rates of the nursing homes,
11 the Medicaide rates of the nursing homes?

12 A The only knowledge I have is what you refer to when
13 the Economic Stabilization clause went into effect there
14 was freezes on wages and price throughout almost every
15 industry and we had to adhere to --

16 Q Let me see if I can rephrase my question because I
17 think you have answered me, but, I am not quite sure.

18 My question to you very simply and I think it can
19 be answered yes or no is this:

20 Isn't it a fact that the State of New York had never
21 frozen the Medicaide rate prior to this year?

22 A To my knowledge I never heard of it and I don't know
23 whether it is so or not.

24 All I know is that it was a position that the State
25 took.

1 MR. KAUFMAN: My question has been answered and I
2 don't need any further answer on it.

3 JUDGE PLAINE: I take it that this is the first
4 Medicaide freeze put on the employers, is that what you
5 are saying?

6 MR. KAUFMAN: That is my understanding and I was
7 trying to see if that was Mr. DeLaurentis' understanding.

8 He is a vice president of a labor organization.

9 Q I take it from your answer that the only freeze that
10 you were aware of is the freeze that occurred during the
11 Economic Stabilization Act, is that correct, prior to
12 this freeze?

13 A The wage and stabilization act which freezed prices
14 and wages.

15 Q Do you recall your negotiations with Hudson View
16 and Hudson Manor for the current collective bargaining
17 agreement?

18 A I recall it to a point.

19 Q Where were those negotiations held?

20 A They were held both in my office and both in the
21 nursing homes.

22 Q How many discussions were there?

23 A Could have been three, four, could have been two.

24 I really don't know.

25 Q Was the question of reimbursement ever brought up

1 during those negotiations, to your knowledge?

2 A Oh, sure.

3 Q It is not a fact that you informed Hudson View that
4 the Federal wage stabilization act was the only way the
5 government would freeze wages?

6 A You are talking about this one?

7 Q Strike the question, I will rephrase it.

8 Isn't it a fact that you informed Hudson View that
9 it was only the Federal Government that would freeze
10 wages or reimburse rates to employees during those
11 negotiations?

12 Do you remember telling them that?

13 A No.

14 Q Could you have told them that?

15 A I could have told them anything.

16 Q So, as a matter of fact, you can't recall exactly
17 what you told them in connection with that, isn't that
18 correct?

19 A That's correct.

20 Q Now, let me ask you this:

21 You testified that thank God that the Economic
22 Stabilization Act is far behind us and you don't have to
23 worry about that.

24 As a matter of fact, don't you still carry that
25 language in your collective bargaining agreement?

1 A There is a clause in the collective bargaining
2 agreement in the event that there would be a freeze and
3 both counsel --

4 MR. KAUFMAN: I have no further question, thank you,
5 have answered my question.

6 JUDGE PLAINE: Just tell me the number of the article.

7 THE WITNESS: ^{Page}Article K of 14.

8 JUDGE PLAINE: What's the exhibit number?

9 MR. KAUFMAN: On most of the contracts, it is on
10 Page 13.

11 THE WITNESS: On this particular contract it is 19.
12 Hudson Manor and Hudson View appears on Page 13 K.

13 JUDGE PLAINE: Is that General Counsel's Exhibit 5
14 and General Counsel Exhibit 6a through D?

15 THE WITNESS: Yes.

16 JUDGE PLAINE: Now, that's the freeze that relates
17 to wage controls, that's not what we are talking about
18 in this case.

19 MR. KAUFMAN: It may very well be, Your Honor.

20 I intend to produce witnesses on it.

21 JUDGE PLAINE: I thought we have been talking about
22 a freeze concerning reimbursement by the Federal agencies
23 to the various respondents in this case.

24 MR. KAUFMAN: If Your Honor will permit me to
25 refresh your recollection, on my opening statement I

1 may have existed at St. James and Plaza.

2 MR. REIER: There is a distinction without a
3 difference.

4 I submit that the union's willingness to await the
5 appeal of the St. James Plaza from what it considered an
6 unfair or unrealistic or arbitrary medicade reimbursement
7 rate in 1975 is no different than a situation where we
8 find ourselves in today where we have also unrealistic
9 arbitrary Medicare rates.

10 JUDGE PLAINE: Well, we are down to is an argument.

11 I suppose you will argue this in your brief, but,
12 I don't think there is any additional evidence to be
13 adduced at this point on this matter.

14 Is there anything further?

15 MR. KAUFMAN: Yes.

16 Q (By Mr. Kaufman) At the time when Mr. Gordon
17 telephoned you, he advised you that because of the freeze
18 Hudson View and Hudson Manor would not be able to implement
19 the wage increase, is that correct?

20 A Yes.

21 Q I believe you testified that upon questions by your
22 attorney, that he suggested that if Hudson View or Hudson
23 Manor would be allowed to layoff employees they then may
24 be able to implement the wage increase, is that correct?

25 A Yes.

1 Q Isn't it also a fact that he indicated to you that
2 if some of the holidays could be postponed or eliminated
3 from the contract, that would be another alternative to
4 implement the wage increase?

5 A He might have said that, I don't recall that verbatim.

6 Q As I understand it then your response to him was
7 that under no circumstances would they be allowed not to
8 give that wage increase or to modify the term and condition
9 of the contract?

10 A Repeat that please.

11 Q As I understand it, your response to him was that
12 you would not permit him or permit Hudson View and Hudson
13 Manor to change the terms and conditions of the existing
14 collective bargaining agreement and that there was no
15 sense in talking about it because what the contract said
16 would have to be, is that correct?

17 A Correct.

18 MR. KAUFMAN: No further questions.

19 MR. EDELMAN: I have no further questions.

20 MR. GREENSPAN: I would like to go into two areas
21 that Mr. Reier brought up very briefly, Your Honor.

22 JUDGE PLAINE: Go ahead.

23 Q (By Mr. Greenspan) In your cross examination
24 by Mr. Reier where you were again talking about the prior
25 times that moneys due the employees were not paid on time.

1 When they were paid, were the moneys that were due
2 the employees for that period of time, from the period
3 of time that it was due to when it was fully paid, were
4 the moneys paid retroactively?

5 A Yes.

6 Q So that in fact, the increase was not -- I am trying
7 to clarify something, Your Honor --

8 The increase was withheld and not deferred during
9 the interim period?

10 MR. KAUFMAN: Objection, it goes and calls for a
11 conclusion.

12 The witness has testified how the increase was paid.

13 The witness can testify whether or not it was
14 retroactively, but, this is a conclusionary statement
15 made by counsel that he is asking the witness to reaffirm.

16 JUDGE PLAINE: It could be, it seems to be --

17 MR. GREENSPAN: I just want to clear up what was
18 said.

19 THE WITNESS: I would like to clear up something also.
20 I don't think that I ever stated that we allowed
21 them to defer the increase because of their appeal.

22 They might have done it on their own, but, I don't
23 think that we ever gave them permission to delay the
24 increase because they had an appeal, they might have
25 automatically done it.

1 I think Mr. Reier was trying to get into that
2 and I want to make the record clear that we never gave
3 permission, they simply either did it and paid it
4 later but actually permission from the union I don't
5 believe it was done.

6 I don't believe I did it anyway.

7 Q (By Mr. Reier) You didn't give permission,
8 did you, you just testified?

9 A I don't believe I personally gave permission.

10 Q You didn't run to the labor board and file an
11 unfair labor practice, did you at that time?

12 A No, I did not.

13 MR. REIER: Nothing further.

14 JUDGE PLAINE: Thank you, you are excused.

15 (Whereupon the witness Alex DeLaurentis leaves
16 the stand)

17 JUDGE PLAINE: Now, general counsel, do you have
18 any further witnesses?

19 MR. EDELMAN: At this time general counsel would
20 rest its case, your Honor.

21 JUDGE PLAINE: You made a motion before and you
22 want to renew that motion?

23 MR. REIER: I would like to renew my motion without
24 repeating the whole statement, your Honor.

25 JUDGE PLAINE: I think the answer I gave you will

1 stand.

2 I think nothing has been added by the cross-
3 examination to demonstrate that, on the motion to strike,
4 the inferences have changed.

5 Inferences are in favor of the general counsel
6 and against the party making the motion to strike.

7 It seems to me that general counsel has made a
8 prima facie case and I think the burden is on the
9 respondent to go forward.

10 I therefore deny the motion to strike and the
11 motion to dismiss.

12 I suggest that we resume tomorrow morning with
13 respondent's case.

14 Now, let's go off the record for a moment and
15 ascertain what sort of a situation we have before us
16 at the present time.

17 (Discussion off the record)

18 JUDGE PLAINE: Back on the record.

19 MR. KAUFMAN: I would call Mr. Gordon to the stand.
20 Whereupon,

21 ALAN GORDON

22 called as a witness, having been first duly sworn by
23 Judge Plaine, was examined and testified as follows:

24 JUDGE PLAINE: Please state your name for the record.

25 THE WITNESS: Alan Gordon.

1

2

Q (By Mr. Kaufman) Mr. Gordon, by whom are you employed?

3

4

A I am employed by the Hudson View Nursing Home.

5

Q Are you connected with Hudson Manor too?

6

A Indirectly. I am not a salaried employee of Hudson View Manor.

7

8

Q What is your relationship with Hudson View?

9

A I am the comptroller vice president.

10

Q Did you participate in the negotiations for a collective bargaining agreement with Local 1115 jointly with counsel for Hudson View Nursing Home and Hudson View Manor?

11

12

13

14

A Yes, I did.

15

Q Did there come a time during your negotiations when the question of reimbursement was discussed?

16

17

A Yes.

18

Q Reimbursement by the state?

19

A Yes. I have been in a number of negotiations.

20

Q Directing your attention to the last negotiation which led up to the contract which has been put into evidence, did you participate in those negotiations?

21

22

A Yes, I did.

23

24

Q Did you discuss during those negotiations reimbursement by the state for wages and other benefits?

25

1 A Yes, I did.

2 Q Did you also discuss wage rates, Medicaid rates?

3 A Yes.

4 Q Now, directing your attention to --

5 Your Honor, to save time I am not going to show
6 the witness all of the exhibits. When I refer to one
7 of the contracts, I am referring to -- all of them would
8 be the same, 5, 6A through D.

9 I am taking 6D as a model.

10 JUDGE PLAINE: All right.

11 Q (By Mr. Kaufman) Referring to Page 13 of the
12 agreement, government controls, do you recall that
13 provision of the agreement?

14 A Yes, very clearly.

15 JUDGE PLAINE: Do you have an extra copy of that handy?

16 MR. KAUFMAN: There were two of them.

17 Q Now, before I ask you a question about this clause,
18 are you familiar with the Medicare and Medicaid
19 reimbursement formula?

20 A Yes, I am.

21 Q The state of New York reimburses the Medicare?

22 A No, the State of New York reimburses for Medicaid.

23 Q What was the percentage of these patients at
24 your facilities and there are two facilities, is that
25 correct?

1 A No. The nursing home is Hudson View Nursing
2 Home. Hudson View Manor at the time was a private home
3 for senior citizens.

4 Q Directing your attention to Hudson View Nursing
5 Home, what is the percentage of the patients who are
6 on Medicaid?

7 A The percentage varies between 85 to 90 percent.

8 Q Are you aware of that provision of the law which
9 states that a nursing home must accept a Medicaid
10 patient?

11 A Yes.

12 Q Now, in computing the Medicaid rate for a home, you
13 are a comptroller, so I assume you are familiar with
14 the reimbursement formulas to some extent?

15 A We live and die by it.

16 Q In computing the Medicaid rate, does the state --
17 what does the state take into account in computing
18 the rate, the Medicaid rate?

19 A (No response)

20 Q Does it take into account the wages and fringe
21 benefits of employees?

22 A Yes. It is basically a cost related form of
23 reimbursement on a year projected, two years forward
24 with a reject cost of living of increase which the state
25 comes up with subject to many limitations.

1 Q When you submit to the state, I assume that
2 you submit to the state a set of papers and some of
3 those papers list the wages and benefits which
4 employees will be earning now and in the future in order
5 for the state to establish its rate, is that correct?

6 A Not quite. Its employees benefits and wages of
7 the year just past of the preceding 12 month period.

8 Q Based on that the state sets a Medicaid rate?

9 A Yes.

10 Q That Medicaid rate is that a daily patient rate?

11 A Yes. It is computed daily and monthly. In effect
12 it is daily.

13 Q If we can take a hypothetical, so that the record
14 is clear on this, if the state was to determine a
15 \$20 Medicaid rate, that would mean that for each patient
16 who is on Medicaid, each day that that patient was at
17 the home, you would receive \$20 for that patient, is
18 that correct?

19 A Essentially, correct.

20 Q I am not -- we are not referring to what your
21 Medicaid rate is, this is purely hypothetical.

22 A Yes.

23 Q Now, out of the rate the state has computed,
24 as I understand it, the amount of the wage, an amount
25 that should cover wages and benefits, is that correct?

1 A Well, it is fairly common knowledge in the
2 nursing home industry in New York that your wages and
3 fringe benefits are going to go between 62 and 72 percent
4 above your total cost of wages and fringes, therefore,
5 it is the major part of your cost, therefore effecting
6 your reimbursement, yes.

7 Q Now, up to the end of 1975 did the state increase
8 Medicaid rates when it was applied for by nursing homes?

9 A Could you repeat the beginning of that?

10 Q Well, prior to this year, had the state ever
11 frozen the Medicaid rate for nursing homes?

12 A Yes, they froze it during the year '71 through '74.

13 Q The economic stabilization act?

14 A Yes.

15 Q That was the rate, is that correct?

16 A It definitely froze our reimbursement rates from
17 the state also.

18 Q After that was lifted, after the economic
19 stabilization act was lifted, Medicaid increased the
20 rate to the homes?

21 A Yes, they did.

22 I don't remember exactly how long after the freeze
23 ended that they raised the rates but there was an
24 increase, yes.

25 Q And they continued to give increases to match

1 operating costs until the freeze in January of
2 this year, is that correct?

3 A Yes, they proceeded along their previous planning
4 of taking your previous years and projections.

5 Q Now, directing your attention to your negotiations
6 with 1115 for the current collective bargaining
7 agreement, during the time of those negotiations, I
8 believe you have testified that there was some
9 discussion about this reimbursement and the reimbursement
10 rate?

11 A Yes.

12 Q Would you tell us what you said and what the union
13 said to you concerning this reimbursement?

14 A Well, of course it is going to have to be an
15 approximate conversation that we had.

16 Q We want your best recollection of it.

17 A We discussed, of course, the question comes up
18 when we sit down to negotiate as Mr. DeLaurentis
19 stated that the average home gets to him and talks of
20 course from his desk and says, where are we going to
21 get the money, it is not an uncommon statement and I
22 made the statement too, where are we going to get the
23 money and he said, you will get it, you will get it
24 from the state, they have always come through in the
25 past, you will get it again.

1 And I said, it is not a sure thing and he
2 said, they have always done it in the past and I said
3 always in the past doesn't mean they will continue and
4 I said I would like a clause put in there.

5 Q You said this to him?

6 A I said yes, I would like a clause put in there
7 freezing our wage scale in accordance with any Medicaid
8 reimbursement freeze.

9 Q Did Mr. DeLaurentis respond to that?

10 A He responded in a negative manner.

11 He stated we will give you the same clause that
12 Long Island has if it is good enough for them it is
13 good enough for you whereby I responded don't think it
14 is good enough and he said well, the only kind of
15 freeze we have ever had was a federal freeze so if there
16 is a freeze, it will be a federal freeze not a state
17 freeze.

18 In other words, you know, at this point we
19 are all very smart, but, looking back on it, in all
20 the years of the operation the only freeze we had was
21 this federal freeze, it had been unheard of to have a
22 state freeze.

23 Q So, that he said to you the only freeze there would
24 be would be a federal freeze?

25 A Yes, and if you get the federal freeze you are

1 covered in the contract, so you have nothing to
2 worry about.

3 Q Now, directing your attention to your discussion
4 with Mr. DeLaurentis, in December of 1975 when you
5 notified him you would be unable -- the facilities would
6 be unable to pay the increase, was there some
7 discussions concerning a substitute and elimination of
8 sick base and then the payment of wages?

9 A Alternatives were brought up, yes.

10 Q Is this because since the rate had been established
11 for the sick days already, since they had been pre-
12 existing, the excess money saved -- not sick days but
13 the holidays --

14 A As a matter of fact, sick days was brought up also.

15 Q Sick days and holidays by cutting back the number
16 being granted since it had been a pre-existing
17 condition and it was already into the rate, you would
18 be able to get the extra no matter --

19 A It was a matter of dollars and cents.

20 It was our feeling we could have less hardship
21 among the employees and it was management's decision
22 as a proposal to the union that if we could reduce
23 the sick days and holidays we could give at least a good
24 portion of the increase and, you know, without any
25 hardship to patients or the employees.

1 Q Now, how long have you been in the nursing
2 home industry, working in the nursing home industry?

3 A Well, I am employed by Hudson View for over five
4 years. I am a certified public accountant doing nursing
5 home accounting for about four years previous to that.

6 Q So, with that experience you would be familiar
7 with the rate structure and rate reimbursement, is that
8 correct?

9 A Yes.

10 Q In your opinion, would the wage rate and the
11 ability to implement the wage increase be tied into
12 the state Medicaid rate set for a home?

13 A Oh, definitely. As I testified, approximately --
14 when you throw in the Medicare percentage, we would
15 average 9 percent private patients although I heard
16 it testified that private patients you can charge
17 whatever you want, you really can't because it is still
18 what the market will bear, so, basically you have
19 got 9 percent of your home on private status where
20 you have to keep your rate competitive and the other
21 91 percent under Medicare which is about 3 percent of
22 our population and the balance under Medicaid which
23 is under the direct control of the Department of
24 State, so we are directed by the reimbursement rate for
25 Medicaid.

1 MR. KAUFMAN: I have no further questions.

2 MR. EDELMAN: I have a couple of questions, your
3 Honor.

4 Q (By Mr. Edelman) You were aware during a
5 discussion with the union of an impending Medicaid freeze
6 in connection with the 1975 agreement?

7 MR. KAUFMAN: Objection, at what time, at the time
8 of the negotiations?

9 MR. EDELMAN: I will clarify the question.

10 Q (By Mr. Edelman) Were you aware of an
11 impending freeze of Medicaid payments in 1975?

12 A It was the furthest thing from my mind.

13 Q Were you concerned that there might be an impending
14 freeze for Medicaid?

15 A I have heard that you basically can't predict
16 anything and it was a concern just as a regular prudent
17 businessman, you know, anything could happen and when
18 writing the contract I did want to protect myself no
19 matter how remote the possibility was.

20 I did want to protect myself.

21 Q It was an issue that you were aware of and it
22 was an issue that you tried to protect yourself for
23 in the contract that you were negotiating?

24 MR. KAUFMAN: He did not testify that he was aware
25 of it, it was an issue that the witness may have thought

1 of, but he was not aware of it.

2 JUDGE PLAINE: What about the protection, ask
3 about protection.

4 Q (By Mr. Edelman) You did try to protect
5 yourself about the procedure inserting a clause in
6 the contract to do so?

7 A We tried to protect ourself.

8 Q You did try to protect yourself in connection with
9 the eventuality that the Medicaid might freeze its
10 rates and you might be unable to meet your contract
11 rates for the employees, is that correct?

12 A I did try. It was a concern. As I say, I tried
13 to protect myself, I could kick myself through the window
14 now.

15 Q You did make efforts to negotiate certain
16 clauses in the contract?

17 A It was brought out and I would say I did try.
18 Subsequent conversations with Mr. DeLaurentis did not
19 change my mind. I was still concerned, but I thought it
20 was the best I could get under the circumstances.

21 Q You agreed -- well, let me rephrase that.

22 You negotiated with Mr. DeLaurentis concerning
23 possible clauses to protect yourself in the event of a
24 Medicaid freeze?

25 A Yes, it was discussed.

1 Q You were unable to secure the protection that
2 you sought, is that correct?

3 A That's correct.

4 Q Therefore you executed and entered into an
5 agreement without these protective clauses, is that
6 correct?

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1 A Without it to the degree that I had wanted it to
2 be.

3 Q The contract is as the exhibit shows, it to be in
4 Exhibits A through D I believe, in other words, those are
5 the clauses that you negotiated?

6 A Yes, I did.

7 Q And ?

8 MR. EDELMAN: And 5, right.

9 I have no further questions.

10 JUDGE PLAINE: Mr. Greenspan?

11 MR. GREENSPAN: I have a few questions.

12 Q (By Mr. Greenspan) Now, getting back to your
13 sessions with the union relating to your concern about
14 the Medicare reimbursement formula.

15 Now, you testified that you said where am I going to
16 get the money from and the union said you get it, or
17 something to that effect?

18 A Yes.

19 Q Isn't it a fact that the union had cut their fee
20 as far as the wages they were demanding for the employees
21 they were representing?

22 A Cut their demands from what point?

23 Q Cut their demands as far as the amount of money
24 they were requesting as an increase.

25 JUDGE PLAINE: If you need more specificity for it.

1 Q Compared to the Long Island Association.

2 A The union always cuts the demands from your initial
3 demands.

4 Q Were you shown the Long Island Association contract?

5 A I was shown parts of it.

6 At what period of time are you speaking of?

7 Q Your negotiation session where the Medicaide issue
8 was raised.

9 A I was shown portions of it.

10 Q Were you shown the wage scales of the Long Island
11 contract?

12 A I think I was told the wage scales.

13 Q The wage scales that you agreed to, are they the
14 same wage scales that are in the Long Island Association
15 contract?

16 MR. REIER: Objection, all contracts are in evidence,
17 they speak for themselves.

18 JUDGE PLAINE: This is something that the witness
19 was told about and the question is:

20 Did he agree to pay the same wage as the Long Island
21 contract of which he was told.

22 Did you pay the same wage scale?

23 Did you agree to pay the same wage scale as the
24 Long Island agreement from what you were told or don't
25 you remember that?

1 THE WITNESS: I remember.

2 I don't know why should I answer it.

3 JUDGE PLAINE: Because you are being asked.

4 THE WITNESS: It is my understanding that we negotiated
5 a lower wage scale than Long Island.

6 Q Are you aware of the fact -- were you told at the
7 time of your negotiation that the association contract had
8 a differential for employees who worked other than the
9 normal day shift?

10 A Yes, I knew that.

11 Q And the contract that you signed with 1115, does
12 it have such a differential?

13 A In a form it does.

14 Q It does?

15 A Yes.

16 Q I believe this is the contract, marked General
17 Counsel Exhibit 6D for the licensed practical nurses.

18 (Handing).

19 Do you know where in here the differential is?

20 MR. KAUFMAN: The document is in evidence and it
21 speaks for itself.

22 THE WITNESS: The differential is that the night
23 shift gets a half hour pay per day more than the day
24 shift.

25 Q Do you recall what the differential was in the

1 association contract?

2 A Yes.

3 Q What was that?

4 A Ten percent.

5 Q So, you have a different type of differential, is
6 that right?

7 A That is correct.

8 Q Now, we have also been discussing the freeze that
9 the State has imposed upon the reimbursement rates, that
10 has been the general tone of your testimony, the area
11 part of your testimony went into that, is that correct?

12 A Yes.

13 Q Has the State ever ordered you to freeze the total
14 of payments?

15 A No.

16 Q Where is Hudson View and Hudson Manor located?

17 A Hudson View and Hudson Manor are located in West-
18 Chester, specifically in the City of Yonkers.

19 Q That would be quite a ways from where the Nassau
20 County Homes are located?

21 A Yes.

22 Q They are in Long Island?

23 A Yes.

24 MR. KAUFMAN: I have no further questions.

25 Q (By Mr. Reier) Mr. Gordon, the protective clause
that you sought during the course of your last negotiations,

1 did they relate to a freeze of Medicaid rates or
2 did they relate to a revision of your individual
3 Medicaid rate to reject the increased cost of your
4 labor contract?

5 A I lost that question. Maybe I can answer what I
6 think the question is.

7 JUDGE PLAIN: No, no, rephrase the question.

8 Q (By Mr. Reier) You testified that you sought
9 clauses, protective clauses to guard against a
10 Medicaid freeze and I am asking you, you didn't
11 contemplate any freeze at the time you indicated that.

12 Were you seeking protective clauses against a
13 kind of universal freeze that presently exists in
14 Medicaid rates for all homes? Or an independent
15 adjustment and guarantee of an individual adjustment in
16 your own rate to reflect the increased cost arising
17 out of your collective bargaining?

18 A A freeze of my own Medicaid rate?

19 Q Let me rephrase the question.

20 The protective clauses that you sought during the
21 course of negotiations, did they relate -- you saw
22 the clauses, the language in the contract?

23 A Yes.

24 Q Did those protective clauses that you sought
25 relate to a freeze, kind of freeze that we have now,

1 an absolute freeze on Medicaid rates or did they
2 relate to a pass through by the State Department of
3 Health in its Medicaid rate insofar as it relates
4 to your home or arising out of your increased cost?

5 A I was only concerned with my home and I wanted
6 the broadest protection I could get and I started out
7 with the broadest possible protection for our home
8 which would have covered a Medicaid -- potential Medicaid
9 freeze.

10 I don't know if that answers your question.

11 MR. REIER: I have no further questions.

12 JUDGE PLAINE: Anything further?

13 (No response)

14 You are excused, thank you Mr. Gordon.

15 (Whereupon witness leaves the stand)

16 JUDGE PLAINE: I take it no one else has anyone
17 to offer tonight. It is late enough.

18 Off the record.

19 (Discussion off the record)

20 JUDGE PLAINE: On the record.

21 MR. KAUFMAN: Your Honor, I would rest at this time.

22 JUDGE PLAINE: All right, we will resume to
23 this courtroom at 10 o'clock tomorrow morning.

24 (Whereupon the record was adjourned at 5:45 p.m.)

25

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

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NASSAU COUNTY HEALTH FACILITIES, INC. and	:	
its members:	:	
BAYVIEW NURSING HOME,	:	
COMMUNITY DRIVE NURSING HOME,	:	Case No.
CENTRAL ISLAND NURSING HOME,	:	29-CA-4797
DALEVIEW NURSING HOME,	:	
FIVE TOWNS NURSING HOME,	:	
FIVE TOWNS HEALTH RELATED FACILITY,	:	
FRANKLIN PARK NURSING HOME,	:	
GLENGARIFF NURSING HOME,	:	
GRANDELL NURSING HOME,	:	
LONG ISLAND TIDES NURSING HOME,	:	
MAYFAIR NURSING HOME,	:	
NASSAU NURSING HOME,	:	
PARKVIEW NURSING HOME,	:	
RIVERHEAD NURSING HOME,	:	
ROCKVILLE NURSING HOME,	:	
-and-	:	
ST. JAMES NURSING HOME	:	29-CA-4798
ST. JAMES PLAZA	:	29-CA-4799
HUNTINGTON NURSING HOME	:	29-CA-4800
HUDSON VIEW MANOR	:	29-CA-4801
HUDSON VIEW NURSING HOME	:	29-CA-4802
-and-	:	
CARILLON HOUSE H.R.F.	:	29-CA-4803
-and-	:	
LOCAL 1115, JOINT BOARD NURSING	:	
HOME AND HOSPITAL EMPLOYEES DIVISION.	:	

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16 Court Street,
Brooklyn, New York
June 23, 1976

The above-entitled matter came on for further
hearing pursuant to adjournment at 10:10 a.m.

1
2 BEFORE:

3 JUDGE HERZEL H.E. PLAINE,

4 Administrative Law Judge

5 APPEARANCES:

6 HOWARD EDELMAN, ESQ.,

Counsel for the General
Counsel

7
8 IRVING REIER, ESQ.,

Of Counsel, Soloman, Rosenbaum
& Goodman, Esqs., 1450 Broad-
way, New York, New York,
appearing on behalf of Nassau
County Health Facilities, Inc.
et al.

11 J. MILFRED HULL, ESQ.,

Of Counsel, Hull, Black &
Grundfast, Esqs., 8 Manor Rd.,
P.O. Box 623, Smithtown,
New York, appearing on behalf
of St. James Nursing Home and
St. James Plaza.

15 RICHARD GREENSPAN, ESQ.,

Of Counsel, Charles Katz, Esq.,
360 Lexington Avenue, New York,
New York, appearing on behalf
of Local 1115.

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I N D E XWITNESSDIPECT CROSS REDIRECT RECROSS

BURTELL CUTLER

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P R O C E E D I N G S

Plaque
JUDGE ~~HERZEL~~: On the record.

Last night the counsel for the charging party, Mr. Greenspan, asked to be excused, that he would not be able to attend the commencement of this morning's session but would be here later, and ~~their~~ Arthur Kaufman, representing the respondent Hudson View Manor and Hudson View Nursing Home, also asked to be excused from attendance this morning.

So I think we are all assembled.

I would ask Mr. Reier to proceed with his case.

MR. REIER: Yes, sir.

Mr. Cutler, please.

Whereupon,

BURTELL CUTLER,

having been called as a witness herein, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REIER:

Q Would you state your full name for the record?

A Burtell Cutler.

Q What's your home address?

A 18 Percheron Lane, Roslyn Heights, New York.

Q Mr. Cutler, do you hold any position in the Nassau County Health Department?

1 County Health Facilities Organization?

2 A Yes, I do.

3 I'm president of the organization.

4 Q And how long have you held that position?

5 A Eight, nine years, I believe.

6 Q Now, as president of the Association, do you parti-
7 cipate in the labor negotiations with the charging
8 party?

9 A Yes, I do.

10 Q And did you participate in the labor negotiations
11 which culminated in the contract which has been intro-
12 duced as the current collective bargaining agreement
13 between the charging party and the Association?

14 A Yes, I did.

15 Q Now, will you state how many sessions, negotiation
16 sessions, took place prior to the execution of that
17 agreement?

18 A Oh, I don't know exactly how many, but there were
19 many sessions, I know concluding with the last one
20 which ran close to twenty hours in December.

21 I know we started sometime in October, I believe,
22 and it ran through November and then into December.

23 Q And did that final session, Mr. Cutler, culminate
24 in an agreement which was reduced to a memorandum
25 of understanding?

1 A Yes, it was.

2 Q Now, I show you a four-page, typewritten document
3 labeled, captioned, "Memorandum of Understanding Reached
4 this 18th day of December, By and Between Nassau County
5 Health Facilities Association, Inc. and Local 1115,
6 Joint Board Nursing Home and Hospital Employees'
7 Division," and ask you whether this was the Memorandum
8 of Understanding which was executed following the com-
9 pletion of negotiations in December of 1974 (handing)?

10 A It appears to be so.

11 Q Now, Mr. Cutler, the last page of this document
12 does not contain signatures, it contains a typewritten
13 -- your name is typed in with an S -- preceded by an
14 S and a stroke, and Mr. DeLaurentis' name is typed in,
15 also preceded by an S and a stroke.

16 Was this document signed, that is, the original
17 of this document signed, to the best of your recollec-
18 tion?

19 A The original was all writing, it was not typed, and
20 I believe it was signed.

21 Q I see.

22 Mr. REIER: Your Honor, I'd like to introduce
23 as Respondent's Exhibit --

24 MR. EDELMAN: 6.

25 MR. REIER: Thank you.

1 Your Honor, to overcome General Counsel's objec-
2 tions to the admission of Respondent's Exhibit 6 for
3 identification, I will state for the record that there
4 is nothing contained in Respondent's 6 for identification
5 which in any way affects the issues in this case; I'm
6 merely introducing it for the purpose of further ques-
7 tioning of the witness as to what he did with this
8 Memorandum of Understanding.

9 JUDGE HERZEL: On that basis, counsel, I will
10 admit Respondent's Exhibit 6 into evidence, and permit
11 you to proceed with the action that followed.

12 The objection will be overruled.

13 (Document marked Respondent's
Exhibit 6 in evidence.)

14 JUDGE HERZEL: Please proceed, Mr. Reier.

15 MR. REIER: Thank you, your Honor.

16 BY MR. REIER:

17 Q Now, Mr. Cutler, you were not present in the Hearing
18 Room yesterday afternoon, but a phrase was used to des-
19 cribe certain provisions.

20 The phrase was "protective clause," and it was used,
21 so the record will be consistent, the term "protective
22 clause " was used to indicate a clause which would
23 insure that the employers would get relief from third-
24 party payers or would be protected against
25 a Medicaid freeze in the event of a grant of wage in-

1 increase and that this clause would give them relief
2 in the event they did not get sufficient relief from
3 the third-party payers.

4 Now, using that definition, during the course of
5 the negotiations which culminated in the settlement in
6 December of 1974, was there any discussion at the nego-
7 tiations concerning "protective clause"?

8 A Yes, there was.

9 Q Now, will you describe the -- strike that.

10 Who was the conversation between?

11 A Well, most of the negotiations were done with
12 Mr. DeLaurentis and Mr. Juval, the negotiators for the
13 union.

14 We had our team of negotiators --

15 Q Please speak up.

16 A Yes.

17 We had our team of negotiators representing our
18 Association.

19 I believe our negotiators were: Mr. Sreter,
20 Mr. Kelmenson, Mr. Sirkus, Mr. Notey -- Thomas Notey,
21 that is -- Mr. Greco, and possibly others were there,
22 but I just can't recall exactly every name.

23 We were concerned about what had happened to us
24 during the Price and Pay Board freeze and we were con-
25 cerned, listening to the fiscal difficulties, of the
Federal and State difficulties.

1 We wanted -- we had asked the union to give us this
2 protective -- so-called protective clause.

3 Q Can I hold you up at this point?

4 A Yes.

5 Q Could you tell us who was asked for this clause?

6 A Mr. DeLaurentis was asked for it.

7 Q And did you make a request of Mr. DeLaurentis?

8 A Yes, I did.

9 Q Now, Mr. Cutler, will you tell us what type of
10 protective clause you requested?

11 A Yes.

12 We had asked that whatever we negotiated, dollar-
13 wise, would be put into the contract as a pass through
14 and that if we didn't get it, we wouldn't have to pay it.

15 Q If you didn't get it from where?

16 A From the State Health Department.

17 Q Now, do you recall the response from any representa-
18 tive of the union to your request for a protective clause?

19 A Yes, I do.

20 Mr. DeLaurentis said, "Absolutely not. It will
21 be politically suicide for me to even think of putting
22 it in.

23 "Why should we worry, that you have always gotten
24 your labor increases from the State Health Department
25 in the past and why should it suddenly change now?"

1 Q I see.

2 And based upon that conversation where Mr. DeLaurentis
3 indicated that it would be politically inexpedient or
4 political suicide not to give it and that why should you
5 worry, you always got a passthrough from the State Depart-
6 ment of Health way, did you then abandon your demand for
7 a protective clause?

8 MR. EDELAMN: Oh, that's leading.

9 JUDGE HERZEL: Well, you've tried to summarize what
10 the witness has said, but why don't you start out again
11 and rephrase your question.

12 MR. REIER: All right.

13 BY MR. REIER:

14 Q Following that conversation, what did you do, if
15 anything, with respect to your demand for a protective
16 clause?

17 A I believe I raised it several times, and I got the
18 same substantial absolutely not answer from Mr. DeLaurentis.

19 Q Now, following the settlement which you say cul-
20 minated in a -- well, strike that.

21 This Memorandum of Understanding which has been
22 introduced as Respondent's Exhibit 6 in evidence, what,
23 if anything, did you do with Respondent's 6, that is,
24 the Memorandum of Understanding?

25 A Well, actually the memorandum of Understanding
that I had was the written Memorandum of Understanding,

1 not this typewritten one..

2 Q Yes.

3 A We had negotiated twenty hours around the click,
4 and that was, as I recall, on -- I don't -- the Memorandum
5 is dated December 18th.

6 I don't know if it was for the previous night or
7 that morning.

8 But that morning I had had an appointment with
9 Mr. McCann, the assistant commissioner for New York State
10 Department of Health in the Bureau of Economics, who was
11 in charge of rate setting for all of the State Health
12 Facilities in New York State.

13 I then went home, changed my clothing and caught
14 the first flight up to Albany to bring these papers to
15 Mr. McCann so that we could try to get the labor contract
16 included in our rates for 1975.

17 Q And did you meet with Mr. McCann on that day --

18 A Yes, I met with Mr. McCann.

19 I presented the papers to him with great concern
20 because there was a substantial increase in wages,
21 fringe benefits and so forth, that is, in the contract.

22 Mr. McCann said to me, "What are you worried about?
23 They have always gone through."

24 And he said he doesn't see any reason why they
25 won't be honored this time.

1 Subsequently we did receive the labor adjustment
2 for the year 1971, which came to --

3 Q 1971?

4 A 1975, I'm sorry.

5 -- which came to 17.1 per cent increase over our
6 previous year's contract, which was also subsequently
7 approved by Mr. Peter Goldmark, who was Director of the
8 Budget for the State of New York.

9 All the rates of our Association were adjusted
10 during the year to reflect the labor increases.

11 Q So that for the year 1975, the wage increases and other
12 adjustments provided in the collective bargaining agree-
13 ment, which is in evidence, were passed through by the
14 New York State Department of Health by adjusting your
15 Medicaid rates; is that correct?

16 A Yes, sir.

17 Q Now, Mr. Cutler, do you recall a meeting that was
18 testified to by Mr. DeLaurentis during the week of December
19 8th, 1975?

20 A Yes, sir.

21 Q Do you recall the exact date of that meeting?

22 A No, sir.

23 Q But it was during the week of December 8th; is that
24 correct?

25 A Yes, sir. It was early December of 1975, I recall

1 that.

2 Q Now, Mr. Cutler, do you recall who was present at
3 that meeting?

4 A I believe yourself, Mr. Thomas Notey, Mr. Sreter;
5 I believe we had one other representative; I think my
6 partner, Ken Kelmenson, was with us.

7 Did I mention yourself, Mr. Reier?

8 Q Yes.

9 A Mr. DeLaurentis and Mr. Juval.

10 Q Now, Mr. Cutler, did you request the meeting or
11 did the union request the meeting?

12 A No; we requested the meeting.

13 Q And why did you request the meeting?

14 A Because we had been advised that the Governor's
15 State of the Union speech was coming out and that in-
16 cluded in the State of the Union speech was a request
17 of the State Assembly to freeze nursing home and hos-
18 pital rates for a 15-month .. period, starting January 1,
19 1976.

20 Q And during the course of that meeting, did you,
21 or other members of the group representing the Association,
22 make certain proposals to the union?

23 A Yes, sir, we did.

24 We tried to make proposals and adjustments in the
25 union contract so that we could survive during the year

1 1976, dollarwise, because if we weren't going to get the
2 dollars, we didn't see how we were going to be able to
3 pay them out to our employees.

4 And at that time, it didn't appear that we were going
5 to get any dollars at all from the State Health Department.

6 Q Now, the meeting took place during the week of
7 December 8th, 1975.

8 Is that correct?

9 A Yes, sir.

10 Q Now, by December of each year, do you -- I don't mean
11 you, personally -- do the nursing home and health-related
12 facilities have rates for the ensuing calendar year?

13 A State Health Department has mandated -- I'm sorry
14 -- the State Assembly had mandated by legislation that
15 the New York State Health Department publish the pro-
16 spective rate, by November 1, of the previous year,
17 or sixty days prior to the effective date of the rate.

18 Q Now --

19 A And --

20 Q I'm sorry, go ahead.

21 A -- this year we didn't receive any adjustments in
22 rates, the only adjustment we received was a so-called
23 interim rate which did nothing more than reiterate the
24 existing rate for the year 1975 to be continued through
25 1976.

1 Q Now, Mr. Cutler, I show you a copy of a letter
2 dated October 30, 1975, addressed to: Operator,
3 Mayfair Nursing Home, and with the address, from the
4 New York State Department of Health, and signed by
5 Mr. McCann.

6 Do you have any connection with the Mayfair Nursing
7 Home?

8 A Yes, sir.

9 I'm a partner of the Mayfair -- partner and
10 administrator of the Mayfair Nursing Home.

11 Q Now, this letter, which is signed by Mr. McCann,
12 as an Assistant Commissioner, Division of Health and
13 Economics, sets forth a rate for January -- a Medicaid
14 reimbursement rate, that is, for January 1, 1976, and
15 I ask you whether this is the -- and I ask you if you
16 received this letter (handing)?

17 A Yes, sir, this is the letter that I received.

18 Q Now, the rate set forth in that letter is \$43.42,
19 as a daily rate.

20 Is that correct?

21 A Yes, sir.

22 Q And that is intended for the period beginning January
23 1, 1976; is that correct?

24 A Yes.

25 Q Now, sir, does that rate reflect the necessary

1 adjustments to cover the labor cost for the increases
2 and other benefits which would have taken effect
3 beginning January 1, 1976?

4 A No, sir.

5 That rate only reflects the average rate paid by
6 the State during the year of 1975.

7 It reflects no increases whatsoever.

8 As a matter of fact, it reflects a decrease in rate.

9 MR. REIER: Your Honor, I'd like to offer into
10 evidence --

11 MR. EDELMAN: I'll stipulate the rate, and I'll
12 stipulate the contents of the letter.

13 You don't have even to offer it.

14 JUDGE HERZEL: Put it in.

15 Let's have it.

16 That's R 7?

17 MR. REIER: Yes, your Honor.

18 JUDGE HERZEL: And it's the notice of the 1976
19 rate; is that right?

20 MR. REIER: The 1976 rate, yes, your Honor.

21 Does your Honor want to see the letter?

22 JUDGE HERZEL: Yes, I'd like to look at it,
23 please.

24 It will be received in evidence as Respondent's
25 Exhibit No. 7.

(Document marked Respondent's Exhibit No. 7, received in evidence.)

BY MR. REIER:

Q Mr. Cutler, following the meeting with Mr. DeLaurentis and the members of your -- and the representatives of the Association, which took place during the week of December 8th, 1975, was an emergency meeting of the Association called?

A Yes, sir.

Q Do you recall when that meeting took place?

A It was held on a Sunday.

Q Would that be December 14th?

A I believe so, yes, sir.

Q And following the Sunday meeting, to your knowledge, was the telegram, which has been admitted into evidence as General Counsel's Exhibit No. 9, sent to Mr. DeLaurentis?

A Yes, sir.

That was the telegram advising that we would be unable to meet any wage increases for 1976.

Q Mr. Cutler, do you remember a meeting in Albany on January 26th, 1976?

A Yes, sir.

Q To the best of your recollection, could you state where the meeting was held and who was present?

A The meeting was held at the Tower Building, which

1 is the State Building, at the New York State Department
2 of Health --

3 Q At whose offices?

4 A -- in the meeting room of Commissioner, or Doctor
5 Whalen.

6 Q And who is Dr. Whalen?

7 A Dr. Whalen is the Commissioner of Health of the
8 State of New York.

9 Q Do you recall who else was present at the meeting?

10 A Well, from the State Health Department, I recall a
11 Assistant Commissioner Davidoff, Commissioner McCann,
12 Deputy Commissioner Klepak, Deputy Commissioner --

13 Q And were there any representatives of the Depart-
14 ment --

15 A -- and Mr. Stephen Berger.

16 Q Who is Mr. Stephen Berger?

17 A Of the Department of Social Services, who --

18 Q Was he the Commissioner at that time, if you recall?

19 A I believe he was Commissioner of Social Services,
20 representing the Governor's office at the time.

21 You were there, Mr. Reier, and I was there, and about
22 12 or 14 people of our association, also, were at the
23 meeting, and Mr. DeLaurentis was also at this meeting.

24 Q Now, do you recall the position, if any, taken
25 by any representative of the Department of Social Services

1 of the Department of Health?

2 A Yes.

3 Mr. Stephen Berger made the strongest statements
4 of everybody in that he advised us all that there would
5 be absolutely no funds available to the nursing home
6 industry or to any health industry for the year of 1976,
7 that the State was in a fiscal crunch, that the Governor
8 was intending to freeze rates although they had not been
9 done at that time, that is, that that was his intent,
10 and that the State Health Department was mandated to
11 carry forth that position and that there would only be
12 three possible adjustments for rates during the year,
13 and that would be one for -- mandated increases of labor
14 as mandated by the State Health Department --

15 Q When you say mandated increases, would those be
16 increases that were mandated for statutory reasons like
17 an increase in the minimum wage??

18 A Well, that would also be another reason.

19 Mandated would be that the State Health Department
20 required ten contract nurses to be put on to meet new
21 code legislation.

22 They would reimburse us for the ten extra nurses
23 at the previous salary that they had recognized.

24 Also, they had -- they would allow an increase to
25 meet the minimum wage that had gone up for the year 1976.

Q Was that the Federal minimum wage which had increased

from 2.10 to 2.30 on January the 1st?

A Yes, sir, which would be the other increase.

Q Was there any other basis on which an increase would be granted?

A There was no other basis, which I'm trying to recall, but I can't at this time.

Q Well, did they make any reference to arithmetical errors?

A Oh, yes, arithmetical -- the third adjustment would be in the event that the State Health Department made any arithmetical errors, they would agree to adjust those rates.

Q Now, at this meeting in Commissioner Whalen's office or the office of the Department of Health, did Mr. DeLaurentis take any position at that meeting?

A Yes.

Mr. DeLaurentis was quite outspoken in advising them that they would be harming the employees, that they would be harming the health industry, that it would be -- that if the State did not give forth these funds, that it would be affecting patient care and that the people in Albany absolutely did not care by taking the position that they were whether the patients were well cared for or the employees received proper wage reimbursement -- proper wages, and that they were just being in a

1 stubborn position up there without looking forward to
2 relief to anybody.

3 Q This meeting that took place in Albany on January
4 26th, had there been any events preceding that which
5 prompted the meeting?

6 Do you recall?

7 A Well, we had had several meetings with the union at,
8 I believe, the Prince George Hotel.

9 We were trying to come to some sort of an -- to work
10 something out, although there was no real movement on
11 either part of the management or the union.

12 While we were there, the State Health Department
13 served restraining orders on both the union and the
14 nursing Home Association, restraining orders to the extent
15 that we could not and should not go out on strike --

16 MR. EDELMAN: I'm going to object to any testimony
17 about the strike.

18 That's clearly irrelevant to the case.

19 A Well, I'm --

20 MR. REIER: Your Honor, I think it lays the founda-
21 tion for what transpired in this industry prior to this
22 January 26th meeting.

23 There had been a threat of a strike.

24 MR. EDELMAN: I'll stipulate.

25 MR. REIER: The union was enjoined. The Association

1 was restrained by the New York State Commissioner of
2 Health, directed, in effect, to hire strike breakers
3 if the union did go out on strike.

4 MR. EDELMAN: Mr. Reier, I will stipulate that the
5 State, which we don't concede had the authority or
6 acted properly to do so, enjoined the union from striking.

7 I'll stipulate to that.

8 It doesn't matter one bit and doesn't determine
9 whether or not the employer violated 8(a)5 of the
10 National Labor Relations Act.

11 No State action can have any effect on whether or
12 not an employer violates the Act.

13 But if it will make you happy, I will stipulate
14 that the State did --

15 MR. REIER: Don't do things to make me happy.

16 MR. EDELMAN: I will stipulate facts that are
17 true.

18 Let's save time. Yes, the union was enjoined by
19 the State from striking because of the police power
20 aspect, which the State raised.

21 We will stipulate to that.

22 MR. REIER: Well, in addition, will you also stipu-
23 late that the nursing homes were restrained and served
24 with a restraining order by the Commissioner of Health
25 requiring them to maintain services and hire replacements

1 in the event of a strike?

2 MR. EDELMAN: That's true. We'll stipulate to
3 that, also.

4 MR. REIER: All right.

5 As a matter of fact, I have the copy of the restrain-
6 ing order in my briefcase --

7 MR. EDELMAN: I'll stipulate to it.

8 MR. REIER: -- signed by the Commissioner of
9 Health.

10 MR. EDELMAN: I'll stipulate to it.

11 JUDGE HERZEL: All right.

12 The stipulation is accepted.

13 Please proceed.

14 MR. REIER: Thank you, your Honor.

15 BY MR. REIER:

16 Q Now, Mr. Cutler, based upon the threat of a strike
17 which was just stipulated to, did you send a telegram
18 on January 12th to the Commissioner of Health, together
19 with copies of that telegram to the Governor of the
20 State of New York, Dr. Kevin Cahill -- who is Dr. Kevin
21 Cahill?

22 A He is the Assistant to the Governor.

23 Q -- the Honorable Ralph G. Caso, Nassau County
24 Executive; Dr. John Dowling, Commissioner of Health of
25 Nassau County; Dr. Mary McLaughlin, Suffolk County

1 Commissioner of Health; and Mr. Earl Wright, Director
2 of the Health Facilities and Planning Division, United
3 States Health, Education and Welfare Department?

4 A Yes, sir.

5 Q And I show you the telegram and ask you whether
6 this telegram was sent to these parties on January 12th?

7 A Yes, sir, this is the telegram.

8 MR. REIER: I offer it into evidence.

9 MR. EDELMAN: I'll stipulate to its admission.

10 MR. REIER: Does your Honor want to see a copy of
11 this?

12 JUDGE HERZEL: Yes.

13 This will be Respondent's Exhibit No. 8 in evidence.

14 (Document marked Respondent's
15 Exhibit No. 8, received in
evidence.)

16 BY MR. REIER:

17 Q Mr. Cutler, I show you a letter dated February 17th,
18 1976, from David W. Burke, identified as secretary to
19 the Governor of the State of New York, and ask you whether
20 you received a copy of this letter, or the original
21 of this letter (handing)?

22 A Yes, sir, this is the letter that Mr. Burke sent
23 us.

24 Q Now, the second paragraph of that letter provides:

25 "Medicaid rates will not be revised to reflect
wage increases. That policy has been promulgated as part

1 of the Commissioner of Health's reimbursement rules.

2 "In addition, the Governor has recommended to the
3 legislature, the imposition of a 1976 freeze on residen-
4 tial health care facility rates,

5 "The financial situation facing the State and its
6 political divisions require such action."

7 Now, sir, I ask you whether the policy stated in
8 the second paragraph of the letter reflects the current
9 status of reimbursement rates?

10 A Well, there's never been an official freeze put
11 into effect; but the State Health Department, to date,
12 has not revised any rates, either.

13 MR. EDELMAN: We will stipulate to the fact that
14 the rates -- what are they, the 1975 rates?

15 MR. REIER: Your Honor, I'd like to offer into
16 evidence as Respondent's Exhibit No. 9, the letter of
17 February 17th, 1976, addressed to Mr. Cutler by the
18 secretary to the Governor of the State of New York.

19 JUDGE HERZEL: Any objection?

20 MR. EDELMAN: I'll take a look at it.

21 I doubt if I have any objection to it.

22 I have no objection, your Honor, to its admission.

23 JUDGE HERZEL: In evidence as Respondent's Exhibit
24 No. 9.

(Document marked Respondent's
Exhibit No. 9, received in
evidence.)

MR. REIER: Mr. Cutler, I show you a copy of a
letter dated May 3, 1976, addressed to Dr. Robert Whalen,
commissioner of Health, and signed by you in behalf of
the Nassau County Health Facilities Association, Inc.,
and ask whether you sent that letter to Dr. Whalen on or
about that date (handing)?

A Yes, sir, this is a copy of my letter to Dr. Whalen.

Q Now, Mr. Cutler, can you tell us -- or, can you
briefly summarize the substance of that letter, because,
frankly, I must confess, much of it was lost on me.

A This letter is a request for a rate adjustment in
the year 1976 to reflect the labor adjustments that were
granted in 1976 and also to reflect the labor contract
that will be in effect for the year 1976.

We had received 17.01 per cent labor factor for the
year of 1975 and that our contract called for more.

The State Health Department has advised that in the
year 1976, they intend giving the trend factor for
labor.

What the trend factor is to date, it appears to be
about 6 per cent, if I recall.

Although it has not been promulgated and the rates
have not been adjusted to date or reflected, and we have

1 requested that this -- what they have recognized in the
2 past continue being recognized in the future, because
3 our 1976 rate will be based on 1974 --

4 Q Hold it a minute.

5 A Okay.

6 Q We'll develop that.

7 You are going beyond the scope of the question.

8 MR. REIER: I'd like to offer into evidence, your
9 Honor, as Respondent's Exhibit No. 10, a letter dated
10 May 3, 1976, to Dr. Whalen from Mr. Cutler, as president
11 of the Nassau County Health Facilities Association, Inc.

12 JUDGE HERZEL: Any objection to that?

13 MR. EDELMAN: Although it's totally irrelevant,
14 your Honor, I have no objection to its admission.

15 MR. REIER: Your Honor, I think the -- I do not
16 understand, and I voiced this yesterday, how General
17 Counsel can make the observation about something being
18 irrelevant that he has not even taken the opportunity
19 to look at.

20 If he wants to make an objection, let him make an
21 objection.

22 I object to the remarks.

23 MR. EDELMAN: I have no objection to it.

24 JUDGE HERZEL: Let him finish.

25 MR. EDELMAN: I'm sorry.

1 MR. REIER: I object to the characterization of
2 exhibits that I'm offering into evidence as irrelevant.

3 If it's irrelevant, let him make an appropriate
4 objection.

5 But I don't think they should be characterized,
6 particularly since he hasn't even taken the trouble
7 to look at it.

8 MR. EDELMAN: I appreciate the remarks that I
9 haven't seen it, but I've heard the benefit of the
10 witness summarize it.

11 I'm also willing to concede that in view of the
12 fact that the rates were frozen, which I would stipu-
13 late to, and in view of the fact that contract obliga-
14 tions were due, and in view of the fact that letters
15 were sent out saying they weren't going to be able to
16 meet the contract --

17 MR. REIER: Is this in the nature of an objection
18 or is this a summary argument on the basis of the merits
19 of the case?

20 J. JUDGE HERZEL: Mr. Reier, please.

21 MR. EDELMAN: -- and in view of the fact that contract
22 obligations were due and you had already sent out letters
23 saying you couldn't pay it, it's conceded, and I'll
24 stipulate to it, your Honor, that Mr. Cutler, from the
25 Nursing Home Association, and Mr. DeLaurentis, from the

1 union, made every attempt they possibly could to the
2 New York State Department of Labor, or any other depart-
3 ment of the State of New York, where they could possibly
4 try to lift the freeze so that the parties (be paid.

5 There's no question that that was done; I'm not making
6 that argument.

7 The question is, and still remains, though:

8 Whether or not in spite of this, the association
9 was obligated under its contract to pay the -- to pay what
10 they agreed to pay?

11 And we contend that they did not.

12 I contend that all of this testimony is irrelevant.

13 JUDGE HERZEL: Let me comment, gentlemen.

14 In my view, I think the General Counsel believes --
15 and not without good reason -- that a large part of your
16 defense is irrelevant.

17 Nevertheless, he appears to be willing to let these
18 exhibits go in so that you can make your argument to
19 me.

20 I'm willing to hear your argument.

21 So, for that reason, I think the exhibit can come in
22 so I would not quarrel any more with this reasoning.

23 MR. REIER: I'm not quarreling.

24 JUDGE HERZEL: let's just get on with the case.

25 Present your documents. We'll rule on them. We

1 will hear objections if there are any objections.

2 MR. REIER: Your Honor, as Employer's Exhibit --
3 as Respondent's Exhibit 10, the letter dated May 3,
4 1976, addressed to the Commissioner of Health for
5 the State of New York.

6 JUDGE HERZEL: Yes.

7 It will be received.

8 (Document so marked Respondent
9 Exhibit No. 10, received in
evidence.)

10 BY MR. REIER:

11 Q Now, Mr. Cutler, I show you a letter -- a copy of
12 a letter dated May 21, 1976, addressed to you by the
13 commissioner of Health of the State of New York, which
14 says:

15 "This is in reply to your letter of May 3, 1976,"
16 which has been admitted in evidence as Respondent's
17 Exhibit 10, and ask whether you received this letter
18 (handing)?

19 A Yes, I did, sir.

20 Q Now, I note in the second paragraph of that letter,
21 which says, in part:

22 "When decisions were reached in regard to the
23 termination of the former policy of passing through labor
24 costs, it was specifically decided that the attained
25 level concept would not carry forward into 1976 rates."

1 Now, this letter is dated May 21, 1976.

2 And to the best of your knowledge, sir, does this
3 still represent the policy of the State of New York or
4 the Department of Health concerning medicaid reimburse-
5 ments?

6 A As of today, that's my understanding.

7 MR. REIER: Your Honor, I'd like to introduce
8 the response of Commissioner Whalen, dated May 21, 1976,
9 as Respondent's Exhibit No. 11.

10 JUDGE HERZEL: Any objection?

11 MR. EDELMAN: No objection.

12 JUDGE HERZEL: In evidence as Respondent's Exhibit
13 No. 11.

14 (Document marked Respondent's
15 Exhibit No. 11, received in
evidence.)

16 MR. REIER: Does your Honor desire to see a copy
17 of it?

18 JUDGE HERZEL: Yes, please.

19 MR. REIER: Here (handing).

20 BY MR. REIER:

21 Q Mr. Cutler, do you know of any pending litigation
22 in the State of New York to upset or to require a reversal
23 of the policy of reimbursement that has been promulgated
24 by the Department Of Health of the State of New York?

25 A Yes, sir.

1 The New York State Health Facilities Association,
2 on behalf of several individual members, or plaintiffs,
3 has brought an action -- I don't recall the court -- to
4 declare the freeze illegal, and this action was brought
5 I believe, in February of this year.

6 It was argued February 27th, if memory serves me
7 right, or at around that time.

8 To date, we are still awaiting a decision by the
9 Judge, on that matter.

10 Q Mr. Cutler, you identified yourself as a principal,
11 I believe, in one of the respondents in this proceeding,
12 that is -- I'm not talking about the association now,
13 I'm talking about the Mayfair Nursing Home.

14 A Yes.

15 Q Are you a principal in any other respondents?

16 A Yes, I am.

17 I'm a principal in the Long Island Tides Nursing
18 Home and also the Long Beach Grandel, a nursing home
19 and health-related facility.

20 Q Now, Mr. Cutler, speaking now as president of the
21 Association, that is, the Nassau County Health Facilities
22 Association, Inc. and as a principal in three of the
23 respondent employers in this proceeding, are you prepared
24 to implement the terms and conditions of the collective
25 bargaining agreement entered into with the union if the

~~These events, as discussed, were~~

1 State reverts to its prior reimbursement policy?

2 A As long as we get the money, there is no reason not
3 to pass it on to the employees.

4 Q And have you so advised Mr. DeLaurentis?

5 A Yes, I have.

6 I believe he knows this on his own, also.

7 MR. REIER: I have no further questions of this
8 witness.

9 MR. EDELMAN: I just have a couple of questions, your
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. EDELMAN:

13 Q Mr. Cutler, when you were negotiating your 1975 con-
14 tract with Mr. DeLaurentis, you were aware of some
15 possibility that there might be a freeze on Medicaid
16 rates or that the rates that came down in 1976 or 1977
17 might not be enough to cover the wages that the union was
18 seeking.

19 Is that correct?

20 A No.

21 I was concerned about them.

22 We had no indication of a freeze.

23 Q You were concerned about the --

24 A Because --

25 Q -- as a --

A -- of the past Federal Government's Wage & Price

1 freeze, that is, going back to the Wage Stabilization,
2 if you recall.

3 Q In any event, you are a prudent businessman and in
4 an industry such as this, it shows a certain amount of
5 care to be aware of possibilities that may occur?

6 A Well, once something happens, you try to offset it.

7 Q So that it was part of your bargaining position
8 at the table to try to get the union to agree to protective
9 clauses that would protect you against these eventu-
10 alities should they occur?

11 A Certainly.

12 Q Right.

13 And this was discussed with the union; is that
14 correct?

15 A Yes, sir.

16 Q And the union would not agree on giving you such
17 protective clauses; is that correct?

18 A That's correct.

19 Q The union convinced you through its assurance
20 that you didn't have to worry?

21 A Well, not really, not exactly the way you put it.

22 The union just took a position that they could
23 not give us the protective clauses for their own
24 political being and also the fact that none of the other
25 unions had done it and they were not going to be the

1 leader and that in the past why should we worry, we
2 have always gotten it.

3 So we probably were worrying unnecessarily, was their
4 position.

5 Q Now, I take it that the union proposed certain
6 wage rates initially; is that correct?

7 A Yes, sir.

8 Q And were the rates that they proposed initially,
9 were they higher than what was ultimately agreed upon?

10 A Oh, sure; and so were the fringe benefits. higher.

11 Q And I take it that the company -- when I say "company,"
12 I'm talking about the Association --

13 A Right.

14 Q -- probably submitted some counter proposal
15 originally in connection with wage rates --

16 A Yes, sir.

17 Q -- which was probably a lot lower than what was
18 ultimately agreed upon; is that correct?

19 A Yes, sir.

20 Q And so that the parties met after bargaining,
21 somewhere, shall we say, in the middle?

22 A It was difficult bargaining.

23 Q Difficult bargaining?

24 A Yes, sir.

25 Q And included in the bargaining were these protective

1 clauses?

2 A Yes, sir.

3 Q Now, ultimately you agreed upon a contract, did you
4 not?

5 A Yes, sir.

6 Q And ultimately, Mr. Cutler, since the contract
7 did not contain any protective clauses, you must have
8 withdrawn your demands for these protective clauses?

9 A No, sir.

10 Q You didn't withdraw the demands for them?

11 A We just never got them.

12 Q Well, you agreed to a contract which didn't contain
13 them?

14 A Right.

15 Up to the moment when we signed it, we were
16 still asking for it, for the protective factor.

17 This was a --

18 Q Well, you signed an agreement without obtaining it?

19 A That's correct.

20 Q Okay.

21 A But we also signed an agreement without giving
22 things that the union had asked for, too, so that it's--

23 A It was -- right.

24 Q Okay.

25 MR. EDELMAN: I have no further questions of this

1 reimbursement problems in the past?

2 A Yes, sir.

3 Q Now, Mr. Cutler, do you know Mr. Tom Notey?

4 I think you referred to him before --

5 A Yes, sir.

6 Q -- as being a part of the negotiating committee -

7 A Correct.

8 Q -- in December of 1975?

9 A Yes.

10 Q And you have personal knowledge that Mr. Tom Notey
11 is associated with the respondent St. James Nursing
12 Home, St. James Plaza?

13 A Yes, sir.

14 Q And those things that as far as negotiations are
15 concerned and what-have-you, would apply with equal force
16 to the respondent St. James Nursing Home and the Plaza
17 as to members of your association; is that correct?

18 A I would say so.

19 Q Right.

20 Now, Mr. Cutler, with your years of experience,
21 by what authority are you, as an individual owner or a
22 partner with other owners, permitted to operate a
23 nursing home or HRF in the State of New York?

24 A I'm licensed by the New York State Department of
25 Health.

1 Q Now, what is the basis for this license?

2 A Licensure is based on, oh, experience, integrity,
3 financial stability, previous operating experience,
4 knowledge about the Health Department of good operations
5 and so forth.

6 Q And is this license continued once it's issued to
7 you or is it renewed?

8 A No.

9 We are on constant supervision, constant inspections,
10 and it's renewable on a yearly basis.

11 Q By whom?

12 A I think every two years, I mean.

13 Q By whom?

14 A By the local Health Departments who are under contract
15 to the New York State Department of Health and also by
16 the Federal Government under HEW for our Medicare
17 licensure.

18 Q And then that you're referring now to the so-called
19 provider agreement?

20 A Yes, sir.

21 Q And can you -- do you have personal knowledge as to
22 what, if anything, will effect a determination of provider
23 agreement with Medicare, which is the Federal program,
24 will have, if any, upon Medicaid, which is the State
25 program?

1 A Yes.

2 Under current rules and regulations, you can no
3 longer have Medicaid without having a Medicare provider.
4 agreement.

5 The State government has required that every health
6 facility in the State of New York now participate in the
7 Federal Medicare program, and the inspections are of a
8 similar nature and they are done on an -- and they are
9 done at the same time by the same Health Department
10 team who files their reports with the State Health Depart-
11 ment and also with the Medicare team.

12 Q Mr. Cutler, with your knowledge, could you tell us
13 what is required concerning per patient ~~hour~~ care
14 in a nursing home with employees such as are covered
15 by the Local 15 contract?

16 A The past required a -- there was a new basis of 4,
17 2, one hours of nursing care, which were established
18 based on two hours for a non-ambulatory and one hour
19 for an ambulator and ~~4 for nursing care on a 24-hour basis.~~

20 Plus the supervision of kitchens, the addition
21 of dieticians this year, which is a new requirement,
22 a full-time dietician for every 200-bed nursing home.

23 The housekeeping requirements.

24 Q Mr. Cutler --

25 A And so forth.

Q -- I'm sorry -- with your experience, what, if

1 anything, would occur in the event that you should decide
2 to cut that to a much lower figure?

3 A Well, the State legislature passed what they call
4 a mini-maxi code this year, which states that you can
5 reduce to the Federal standards, which are minimum
6 standards, and you can't exceed the State standards, which
7 are maximum standards.

8 They have gone out and done inspections within
9 every health facility in the State of New York in the
10 past two and a half months, I believe, in which they
11 have given each home a so-called scorecard that they
12 must post as to whether they meet good Federal standards,
13 good State standards in eight different departments.

14 The home is then rated as either good, poor or
15 excellent home within these departments, and then a
16 certain amount of minimum homes will either give you
17 your ultimate good or bad or whatever the State has
18 required, your report card.

19 Q Mr. Cutler, if you decided that one of your homes
20 -- let's take the Mayfair home -- that you are going to
21 cut your care down to, say, one and a half hours per
22 patient care, what, if anything, could occur?

23 A Well, you could fall into a deficiency attitude,
24 which would mandate a fine by the State of New York, a
25 fine of a thousand dollars a day or up to \$10,000 a day.

Q And to your personal knowledge, do the provisions

1 of the State Health law that you are referring to like-
2 wise provide for a complete revocation of your certi-
3 fication to operate a nursing home?

4 A A proceeding to start revocation, yes, they do so
5 provide.

6 Q And to your knowledge, what percentage of the
7 homes and the members of your association maintain
8 Medicaid patients?

9 A I say Medicaid patients are maintained in every
10 nursing home.

11 There is an average of about 90 per cent of the
12 patient load is Medicaid.

13 Q And this is the bulk of the care rendered by most
14 of the respondent homes in this case?

15 A Well, you see, under Federal statute, under Title 6,
16 the Federal standards, we are not permitted to discriminate
17 among patients that we take by reason of race, religion,
18 color, creed or sponsorship, which means that if we want
19 to take a private patient over a medicaid patient,
20 it is not in our domain to do so.

21 We must give preferential admission to whoever is
22 on that list first.

23 And if we don't take the so-called Medicaid patient,
24 we then will have discriminated against sponsorhsip and
25 we will also be subject to a fine and revocation of our

1 license at that time.

2 Q Fine.

3 Mr. Cutler, you are familiar with the rules and regu-
4 lations of the New York State Health Department as per-
5 tains to Health Facilities, are you not?

6 A Yes, sir.

7 Q And predicated upon your knowledge of those rules
8 and regulations, can you give us your opinion as to what
9 actual control you, as a nursing home proprietor, have
10 in making individual choices, without adhering to these
11 rules and regulations?

12 A I -- we had a discussion about this only recently.
13 I don't have any more control.

14 I just put the costs and the employees and every-
15 thing together and just take what I'm supposed to do and
16 just turn it over to the State who is supposed to
17 reimburse me to do whatever they required me to do.

18 Q Are you saying, sir, that your business is not
19 in the element of free enterprise?

20 A No, sir, it is not.

21 Q For how long would you say this has existed?
22 In your opinion.

23 A This is the past several years; it has become more
24 so in the past year and a half.

25 Q And sir, are you saying that your entire operation

1 in the health facilities is mandated and controlled
2 principally by and exclusively by the State Health
3 Department of New York --

4 A I would --

5 Q -- and other governmental agencies?

6 A I would certainly say so, sir.

7 Q Mr. Cutler, in the event your license should be
8 terminated by the State Health Department, what, if any-
9 thing, happens to the labor contract with Local 1119?

10 A Their contract ceases at that time.

11 Q Do you have a clause in that contract providing
12 that it will cease in the event that you lose your
13 license?

14 A I don't believe so.

15 Q Then by what basis do you predicate that statement,
16 sir?

17 A They would have no way to effectuate it, I would
18 assume.

19 Q But that's not written in the contract, either, is
20 it?

21 A No, sir.

22 JUDGE HERZEL: What is the difference between
23 a nursing home and a health facility?

24 THE WITNESS: A health-related facility, your
25 Honor, is a lesser care facility, where a nursing home

1 would have intensive care nursing.

2 A health facility would have it where the residents,
3 instead of being called patients, need nursing care or
4 social care and they would be able to care for them-
5 selves or they function on a more individual basis than
6 those in the nursing home, sir.

7 JUDGE HERZEL: In this matter of your ability to
8 set rates and charge in the Medicaid area what has been
9 permitted, how frequently and under what relationship
10 is this rate examination managed?

11 THE WITNESS: Well, normally, your Honor, it is
12 revised on a yearly basis by the State Health Department.

13 We submit the cost of operations of our homes,
14 the State Health Department runs two years behind.

15 For the year, say, this year of 1976, they would
16 have taken our 1974 allowable costs and added factors
17 such as inflationary factors and labor factors to them
18 that they have seen in order to come up to a rate which
19 usually runs about enough to keep the home operating
20 on a little more than a break-even basis, because
21 Medicaid does not give us any profit at all.

22 It's not intended to give us a operation and the
23 salaries to everybody involved which are allowed by the
24 State.

25 And this has been done on a yearly basis, that is,

1 up to this year.

2 JUDGE HERZEL: This is done automatically by the
3 State rather than on application by you?

4 THE WITNESS: Yes, sir.

5 JUDGE HERZEL: I see.

6 Do you enjoy the right to make application?

7 Is there anything to prevent you from making appli-
8 cation?

9 THE WITNESS: Well, sir, many years ago when I
10 first started in this operation, we had -- all of our
11 patients were private-paying patients.

12 And then we enjoyed a different type of operation.
13 We were regulated then by the Social Services Depart-
14 ment and Health Department, on different regulations.

15 Subsequently, Medicare and Medicaid came into being
16 and they mandated all of these rules and regulations down
17 to even the fact that we could not refuse patients
18 by reason of sponsorship where they relieved the children
19 of the families of the burden of paying for their mothers
20 and fathers with the nursing homes.

21 We didn't have to go through the test, the monetary
22 test of 2

23 And at that time, your Honor, the industry had
24 changed so drastically and we were in it so deeply,
25 there was no where else to go because we were all on
mortgages that we have on the buildings that we built,

1 on other personal obligations, and most of us are in it
2 to hope to pay everything off and eventually get out of
3 the business.

4 JUDGE HERZEL: But my question is, under your current
5 system, does the State automatically look at your costs
6 and automatically yearly set a rate, or do you enjoy
7 the right to apply for adjustments?

8 THE WITNESS: We get a yearly rate, and the only
9 adjustments that we can apply for are adjustments that
10 are arithmetical errors or that the State would change
11 their code and require us to increase staffing and
12 we would apply for an adjustment to meet the increased
13 cost of the new staffing.

14 Other than that, we can't do it.

15 JUDGE HERZEL: I'm not talking about the most recent
16 arrangement.

17 THE WITNESS: No.

18 I'm speaking about the past.

19 JUDGE HERZEL: I'm talking about in general.

20 THE WITNESS: That's what has been the past situa-
21 tion, also, except --

22 JUDGE HERZEL: Are you telling me that you do not
23 have the right, that you're precluded from applying to
24 the State for an adjustment if there is some additional
25 or unusual costs?

THE WITNESS: No, sir; I'm saying that we can apply

1 if there are --

2 JUDGE HERZEL: You can apply?

3 THE WITNESS: Yes, sir.

4 JUDGE HERZEL: Okay.

5 Go ahead.

6 BY MR. HULL:

7 Q And you have applied, in fact, many years past,
8 which is called an appeal, Mr. Cutler?

9 A Yes, sir.

10 Q And what, if anything, has happened to any appeals
11 pending since January the 1st of 1976, to your personal
12 knowledge?

13 A I don't know of any appeals that have gone through.
14 I understand that there have been some specific appeals
15 on individual labor increased staffing requirements
16 that have been approved.

17 But in general, we have an appeal pending on behalf
18 of all of the homes in this Association for a rate and
19 labor increase and adjustment.

20 Q And there has been a determination of that appeal,
21 to your knowledge?

22 A No, sir, there has been no determination.

23 Q Can you tell us, Mr. Cutler, what the form HE2
24 means?

A That is putting together of -- HE2 is the annual

1
2 filing of the cost report of nursing homes and health-
3 related facilities.

4 That is all the costs that the facilities had during
5 that particular year or previous year.

6 Q And that form, when you submit it, addresses basic-
7 ally what is utilized by the New York State Economics
8 Department in making a new rate for you for the ensuing
9 year?

10 A Yes, sir.

11 Q Is that correct?

12 A Yes, sir.

13 Q And if that form is not submitted, what, if any-
14 thing, happens to your rate for the ensuing year?

15 A We are penalized ten per cent on the existing rate.

16 Q You are penalized?

17 A Ten per cent on the existing rate, that is, until
18 the HE2 is filed.

19 Q And once your rate has been established after the
20 State examines your HE2 forms, what other characteristics
21 do they use to determine what your rate is going to be,
22 other than the HE2?

23 Does geographic location have anything to do with
24 it?

25 A Geographic location, size of home have to do with
it, have to do with the economic factors of the area that

1 you are in, have to do with the establishment of rates,
2 too.

3 Q Rates vary from one nursing home or HR F to another?

4 A Yes, sir.

5 Q By what margin would you say is the minimum as
6 compared to the maximum?

7 A I couldn't give you a range.

8 I wouldn't know the rates.

9 Q If I said that there are some who are receiving
10 approximately \$37 per patient a day as compared to, say,
11 yours, who is receiving about \$44-- is that correct?

12 A Well, there are other homes that I know that receive
13 as much as \$70 a day, which is LIJ.

14 Q Where are they located?

15 A That's in Queens, I believe New Hyde Park.

16 Q And is that a proprietary or non-proprietary?

17 A It's a voluntary health-related facility.

18 Q With reference to your negotiations with Local 1115,
19 you've had many years, I think you have told us, experience
20 negotiating with Local 1115 in the past --

21 A Yes, sir.

22 Q -- prior to this last contract?

23 A Yes, sir.

24 Q If I take you, sir, back to 1969 and 1971 -- and I
25 know it's a little remote, but I think it's important
for this next question -- what procedure if any, was

1 followed by you at the times that you negotiated new
2 union contracts?

3 How much time did you spend negotiating those rates?

4 A A lot of time.

5 Q All right.

6 And once the contract was agreed to, what, if anything,
7 would you do then?

8 A Well, we would then submit it to the State Health
9 Department.

10 Q And, Mr. Cutler, I ask you, sir, prior to the
11 issue at hand for the years 1970, 1969 and 1971, these
12 are two contracts with one --

13 A Three year with one wage over opener.

14 Q And these prior contracts when they were submitted
15 and these contracts were negotiated by you, did you at any
16 time during those negotiations have any question in your
17 mind as to whether you would be reimbursed by the State
18 Health Department for the payment of the increases in the
19 wages?

20 A Not really.

21 Q Or the fringes?

22 A Not really.

23 It didn't come about until after the Federal
24 government had imposed the price and wage freeze.

25 That was the start of the concern that we had.

1 Q And would you say, sir, that an accurate percentage,
2 of the total wages paid by a facility operating today is
3 in the realm of approximately 62 to 68 per cent?

4 A It could be as high as 70 per cent.

5 Q Up to 70 per cent?

6 A Yes, sir.

7 Q So then you are talking about an additional 30
8 per cent utilized for the other operating costs?

9 A That's correct.

10 Q Debt service --

11 A Debt service, yes, purchase of food and other
12 products.

13 Q Now, if I may, one last question.

14 I believe you spoke before about the pass through
15 provision.

16 A Yes, sir.

17 Q And your discussions with Mr. DeLaurentis concerning
18 procuring this provision in your new labor contract.

19 We had testimony yesterday that there is a provision
20 concernig Federal wage freeze, economic freezes.

21 Are you aware of that provision in the current
22 contract?

23 If there is a Federal freeze, are you aware of that?

24 A I'm not aware of this.

25 Q Did you discuss this with him?

1 Was this in turn, inserted in the contract in lieu of
2 the past provider pass through?

3 A I would have to read the contract.

4 Q Would you just refer to that, if you would, for one
5 second?

6 JUDGE HERZEL: What document would you like to look
7 at, sir?

8 MR. HULL: Any of the existing contracts would be
9 fine.

10 JUDGE HERZEL: What exhibit is that?

11 MR. HULL: I believe that's number --

12 JUDGE HERZEL: What GC number is that that you are
13 showing the witness?

14 MR. EDELMAN: Oh, your Honor, I'm showing him the
15 Association contracts, your Honor, which would be -- one
16 of them, anyway -- 2-A, 2-B or 2-C, whichever one it
17 is, because they are all the same form.

18 JUDGE HERZEL: I see.

19 Can you show me a copy so I can follow what he's
20 looking at?

21 MR. EDELMAN: Yes, sir.

22 THE WITNESS: It's page 19.

23 MR. REIER: Could I get the question that is before
24 the witness right now?

25 JUDGE HERZEL: Page 19, is it under K, Government

1 controls, staring on Page 18?

2 THE WITNESS: Yes, sir.

3 JUDGE HERZEL: I see.

4 Now, what's the question?

5 BY MR. HULL:

6 Q The question is:

7 Are you familiar with that provision now that you
8 have refreshed your recollection?

9 A Yes, I am, sir.

10 Q And that provision, in a sense, represents that
11 which you requested but to apply and limited solely to
12 the State level?

13 A Yes, sir.

14 We asked for this to be put over into the State,
15 also.

16 Q And in the terms of negotiations that you've told
17 us about, you had, did you not, many discussions with
18 Mr. DeLaurentis concerning this pass through provision?

19 A Yes, sir.

20 Q And I believe you testified before that the basis
21 of the understanding, discussions, were to the effect:
22 Don't worry, this never happened before?

23 A That's correct, sir.

24 Q And this is in fact the first time that the State
25 of New York has in fact issued a freeze upon wages in
health facilities, to your knowledge, is that correct?

1 A Well, to the best of my knowledge.

2 There may have been one in the past that somebody
3 mentioned to me, but I don't recall it.

4 Q Well, that was the Federal.

5 A Right.

6 Q I'm talking about New York State.

7 A I don't recall any.

8 MR. EDELMAN: I'm going to object to it as being
9 characterized on a freeze of wages.

10 I believe it's a reimbursement.

11 MR. HULL: Okay.

12 MR. EDELMAN: And that's your characterization.

13 MR. HULL: And that's my characterization, right.

14 I have no further questions.

15 Thank you.

16 REDIRECT EXAMINATION

17 BY MR. REIER:

18 Q Mr. Cutler, you testified that you are precluded
19 by State and Federal law from discriminating on the basis
20 of sponsorship -- and I assume that you mean by "sponsor-
21 ship: whether the patient is a private patient or Medicare
22 or Medicaid patient; is that correct?

23 A Yes, sir.

24 Q Isn't it a fact, sir, that homes admit private
25 patients who subsequently become Medicaid patients when

1 their funds or resources run out?

2 A Yes, sir.

3 Q Has this happened frequently?

4 A Constantly.

5 I'd say a majority of the patients that come in as
6 private patients, turn into Medicaid patients.

7 Q Now, with respect to that policy prohibiting dis-
8 crimination on the basis of sponsorship, does your
9 home distribute to applicants for admission, or their
10 relatives, a letter setting that forth?

11 A Yes, sir.

12 Q And I show you a letter from the Mayfair Nursing
13 Home, dated December 18th, 1973, and ask you whether
14 this letter is distributed to applicants for admission,
15 or their relatives (handing)?

16 A Yes, sir.

17 MR. REIER: Your Honor, I'd like to introduce
18 into evidence a copy of a letter dated February 18th,
19 1973, --

20 JUDGE HERZEL: 1973?

21 MR. REIER: Yes.

22 BY MR. REIER:

23 Q Is this letter still used?

24 A Yes, sir.

25 MR. REIER: -- dated February 18th, 1973, which
specifically refers to Title 6 of the Civil Rights Act

1 of 1974 and which bears an impression, "State and
2 Federal Laws prohibit discrimination based on race,
3 creed, color, national origin, sex or sponsorship."

4 JUDGE HERZEL: Any objection?

5 MR. EDELMAN: No objection.

6 JUDGE HERZEL: It's in evidence as Respondent's
7 Exhibit No. 12.

8 (Document marked Respondent's
9 Exhibit No. 12, received
10 in evidence.)

11 MR. REIER: I have no further questions of the
12 witness.

13 MR. EDELMAN: I have no further questions.

14 MR. HULL: I have no further questions.

15 JUDGE HERZEL: Thank you.

16 You are excused.

17 THE WITNESS: Thank you, sir.

18 (Witness excused.)

19 MR. EDELMAN: May we be off the record, your
20 Honor?

21 JUDGE HERZEL: Yes.

22 Off the record.

23 (Discussion off the record.)

24 JUDGE HERZEL: Back on the record, please.

25 Why don't you state the stipulation, Mr. Edelman.

MR. EDELMAN: Your Honor, I'm perfectly willing

1 to stipulate to the truth of everything that Mr. Cutler
2 said.

3 I'll stipulate that he wrote and that he received
4 the responses that he testified that he received from the
5 various agencies.

6 Also, your Honor, I'll stipulate to the truth
7 of his entire testimony.

8 JUDGE HERZEL: And I take it if there is any cumu-
9 lative testimony about to be offered in this field,
10 that you are not going to -- that you'd like to avoid
11 having that offered on the basis that you are stipulating?

12 MR. EDELMAN: Right.

13 Also, I will stipulate that the respondents can make
14 a statement on the record that if so-and-so were called,
15 he would testify to the same thing that Mr. Cutler
16 testified to.

17 JUDGE HERZEL: That would be the best way to handle
18 that.

19 MR. HULL: I would so stipulate, your Honor.

20 JUDGE HERZEL: Mr. Hull, what do you say on that?

21 MR. HULL: As attorney for the respondents Saint
22 James Nursing Home and Saint James Plaza, pursuant to
23 the stipulation of counsel, I would request that the record
24 reflect that the witnesses I was going to call on behalf
25 of these two respondents would testify, in essence, to

1 those facts which were testified to by Mr. Cutler.

2 Therefore, to expedite time, his testimony will be
3 binding upon these two respondents as if we had called
4 separate witnesses therefore.

5 MR. EDELMAN: Exactly.

6 MR. GREENSPAN: Your Honor, may I be heard briefly?

7 JUDGE HERZEL: Yes.

8 MR. GREENSPAN: I understand there was some dis-
9 cussion earlier today about the relevancy of this type
10 of information as far as the State's freeze and the
11 results that it had.

12 JUDGE HERZEL: And as I understood it, counsel for
13 the General counsel is not giving up his position that
14 much of this is not relevant.

15 MR. GREENSPAN: Not relevant?

16 JUDGE HERZEL: Yes.

17 -- to the issue before me.

18 MR. GREENSPAN: Right.

19 JUDGE HERZEL: But what he's simply stipulating
20 to, as I understand it, is that whatever Mr. Cutler did say
21 apparently was the truth and that if there are other
22 witnesses who are about to say the same thing, he's
23 willing to admit that those are not -- that those are
24 true statements.

25 MR. GREENSPAN: Fine.

1 I just wanted to understand the fact that there
2 was an objection and that this material is --

3 JUDGE HERZEL: No, no.

4 MR. GREENSPAN: Fine, your Honor.

5 JUDGE HERZEL: My receiving the stipulation, the
6 making of the stipulation and my receiving it, does not
7 go to the question of whether it becomes the crucial factor
8 in finding for or against.

9 It may end up being a factor, but you and counsel for
10 the General Counsel are entirely free to argue that it
11 is not relevant to the issue and that I should not consider
12 it.

13 MR. GREENSPAN: Very good, your Honor.

14 MR. REIER: Your Honor?

15 JUDGE HERZEL: Yes, Mr. Reier?

16 MR. REIER: Your Honor, I will join in the stipu-
17 lation. As your Honor knows, I represent, in addition
18 to the Nassau County Health Facilities Association, and
19 its member homes, two homes that are not members of the
20 Association, namely Carillon and Huntington.

21 And on behalf of those, your Honor, I will join in
22 the stipulation.

23 JUDGE HERZEL: Fine.

24 MR. REIER: As well as to the Association and the
25 member homes in the stipulation.

JUDGE HERZEL: So that we have unanimity in the stipulation.

MR. REIER: Your Honor, may I have a ten-minutes recess?

JUDGE HERZEL: Yes.

(Recess taken. Ten-minute recess.)

JUDGE HERZEL: Back on the record.

Whereupon,

GEORGE MEITCH,

was called as a witness herein, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REIER:

Q ~~Would~~ you state your full name?

A George Meitch.

Q What's your home address?

A 1917 Evva Drive, Schenectady, New York, 12303.

Q Mr. Meitch, are you employed by any agency of the State of New York?

A Yes, I am.

Q Which agency is that?

A The New York State Health Department.

Q And what position do you hold with the New York State Health Department?

1 A I am the Director of the Bureau of Reimbursement
2 Rate Setting.

3 Q Mr. Meitch, are you here in response to a subpoena
4 fo the National Labor Relations Board?

5 A I am.

6 Q Mr. Meitch, prior to your entering this hearing
7 room, have you ever seen me before?

8 A No, not to my knowledge.

9 Q Now, Mr. Meitch, you testified that you --as to the
10 position you hold with the New York State Department
11 of Health.

12 Would you state basically what the jurisdiction
13 of that division is?

14 A Basically, the -- well, the Bureau of Reimbursement
15 Rate Setting, the responsibilities are to compute the
16 Medicaid rates of payment for all of the medical
17 facilities in the State of New York -- that would be
18 the hospitals, nursing homes, health-related facilities,
19 and treatment diagnostic centers, roughly about 1400 to
20 1600 facilities.

21 Q Mr. Meitch, are you familiar with the individual
22 employers or individual nursing homes and health-related
23 facilities that are involved in this proceeding?

24 A Some of them, yes.

25 Q And when I say familiar, I mean would they all come

1 under the jurisdiction of the rate setting of your
2 department?

3 A They would.

4 Q Now, Mr. Meitch, when you say you set rates, you do
5 not set rates for private patients in these nursing
6 homes, do you?

7 A Correct.

8 The department does not have control of any private
9 patients.

10 Q So that the rates that you set are for what kind
11 of rates?

12 A For Medicaid rates of payment.

13 Q Now, the rates that are set, the Medicaid rates
14 that are set, for Medicaid patients in a nursing home
15 or health-related facility, is that the sole rate that
16 may be charged by the facility for the care of that
17 patient?

18 A That is true, yes, correct.

19 Q In other words, they can't -- the home or health-
20 related facility may not require the patient or the
21 patient's family to supplement the Medicaid reimbursement
22 rate?

23 A Correct.

24 No facility can bill an amount in excess of the
25 Medicaid rate of payment.

1 And while there may be various payers, like the
2 local Commissioner may pay a portion of it and social
3 security may contribute a portion of it, in no event can
4 the amount exceed the total Medicaid rate.

5 Q Now, Mr. Meitch, there's been testimony that the
6 rate that's paid to a facility is made up, in part, of
7 funds of the Federal Government, part of the State Govern-
8 ment and part of the local government, that is, the County
9 or the City, depending on where the facility is located.

10 Is that correct?

11 A That is true.

12 Q But the actual rate setting is determined by which
13 of the three --

14 A State.

15 Q -- political subdivisions?

16 A The State.

17 Q The State?

18 A Yes.

19 As a matter of fact, the Commissioner of Health
20 is responsible to certify to the Director of Budget,
21 the rates that reflect the efficient production of
22 services and the Director of the Budget approves the
23 rates of payment.

24 Q Now, there's a provision of the Public Health Law,
25 Section 2807, subparagraph 4, which requires that rates,
as I understand it, be promulgated by 60 days prior to

1 the ensuing year.

2 Is that correct?

3 A That's true.

4 Q Now, have rates been promulgated this year, that
5 is, 1975 for 1976 in accordance with that law?

6 A Well, I'll have to give you a slightly lengthy
7 description of that.

8 But basically when it came time to develop the
9 1976 rates of payment, in late 1975, the Governor and
10 the legislature were talking about freezing nursing
11 home rates in 1976.

12 In addition to that, there was the State fiscal
13 plight, there was also the plight of New York City and
14 other localities, and so the State was not in a position
15 to actually come out with computed, final 1976
16 rates of payment.

17 So as a result, what we did was release, prior to
18 November 1, the interim rates of payment.

19 And so what rates the facilities now have are their
20 1975 pure rates and they are being paid those rates of
21 payment as an interim measure until final 1976 rates of
22 payment are computed.

23 Q Now, these interim rates that you have made reference
24 to are still in effect at this date?

25 A They are in effect, yes.

1 Q Now, in the time that you have been associated with
2 the agency or for any period prior thereto of which
3 you have knowledge, has it ever happened that rates for
4 a year in as late as -- that rates as late as -- that
5 are in effect as late as June of the year are still interim
6 rates for that year?

7 A To my knowledge, in the past there have been a
8 few times when we were late with them but never this late.

9 Q Now, these interim rates that are in effect at the
10 present time, and I assume for 1976, do they reflect any
11 increase for labor costs arising during 1976?

12 A Basically, they do not.

13 They really represent 1975 rates of payment.

14 Q So that is it fair to say that the interim 1976 rate
15 is in effect, basically, the 1975 rate?

16 A It is the 1975 rate.

17 Q It is the 1975 rate?

18 A That's correct.

19 Q Now, isn't it a fact that based on the way that
20 rates are computed, that the 1975 rate might not reflect
21 all the labor costs for 1976?

22 A That's true.

23 Q If two adjustments were granted during 1975 -- when
24 I say two adjustments, that is, wage increases to
25 employees, one of January of 1975 and one in July of 1975,

1 would the rate -- how would the rate reflect those adjust-
2 ments if there was a pass through?

3 A Well, what would have happened is that we would
4 have determined what the base period for 1975 was, so in
5 computing the original 1975 rate of payment we use 1975 costs.
6 We took the 1973 costs, projected them into 1975, allowing
7 for anticipated inflation.

8 Then when there was a settlement in excess of that
9 projection factor, the reimbursement rate for 1975 was revised
10 to reflect actual wage increases over the projected costs.

11 So that it, in effect, should have been sufficient
12 to give facilities monies in 1975 to cover their 1975
13 costs.

14 JUDGE HERZEL: Well, when you do -- when you do use
15 1973 to compute 1975 and you do add what you anticipate
16 are increases of sorts, including inflation?

17 THE WITNESS: Yes.

18 JUDGE HERZEL: Do you include anticipated wage
19 increase that you are informed of?

20 THE WITNESS: What we would do is in developing
21 the initial rates, we would take into account the price
22 movement for all types of things that if sales have to
23 purchase, for instance, food, fuel and so forth.

24 JUDGE HERZEL: Yes.

25 THE WITNESS: In the area of wages, the department

1 currently is -- has a survey of hospital employees.

2 And what they try to do from that is derive the
3 movement of hospital employee wages and then relate that
4 to the nursing homes.

5 And so we would say that in the Nassau area and in
6 the New York City area, and so forth, wages are going up
7 according to this survey a certain percentage.

8 And that would be allowed in the rate period over
9 the base period.

10 JUDGE HERZEL: So that your 1973 costs do include
11 these inflationary or increasing factors; is that what
12 your are saying?

13 THE WITNESS: Correct, yes, your Honor, on a group
14 average basis, not individual facilities.

15 JUDGE HERZEL: I understand.

16 Proceed.

17 BY MR. REIER:

18 Q Now, Mr. Meitch, I am directing your attention to
19 a collective bargaining agreement, which is already in
20 evidence as General Counsel's Exhibit No. 2, and showing
21 you the wage schedule there, that there were two increases
22 granted, one on January 1, 1975 of \$15 per week and one
23 in July 1 of 1975 of \$8 per week (handing).

24 A Yes.

25 Q Now, Mr. Meitch, if the -- how -- if that entire

1 increase were allowed, what adjustment would be made in
2 the rate to reflect those increases?

3 A Well, you see, what we would have to do is we couldn't
4 base it just on these figures here, because again in
5 recognizing these increases, we took the 1973 cost
6 and projected it forward, that is, allowing for a certain
7 amount of wage increase, and then we determined the actual
8 wage increases, and then we determined the actual wage increase
9 for this group of facilities and related the actual to
10 what was estimated and made up the differential.

11 Q I see.

12 Now, Mr. Meitch, if you took the cumulative effect
13 of that, that is, an increase of \$8 that was implemented
14 in the middle of the year, the cumulative effect of that,
15 I would assume, would be \$15 for the entire year and
16 \$8 for the half of the year?

17 A Yes.

18 Q So you would, I assume, calculate that increase as
19 \$19, 15 plus half of the 8; is that correct?

20 A That's true.

21 Q But at the end of the year the entire \$23 would
22 be incorporated into the employee wage rate?

23 A Yes.

24 Q Now, since you set your interim rates for 1976 on the
25 basis of the 1975 rate --

1 A Excuse me, 1974.

2 Q Well, I'm saying the interim rate for 1976 is, in
3 effect, as you indicated, the 1975 rate --

4 A Correct.

5 Q -- and since that rate only contemplates an aver-
6 aging of the labor costs for that year but at the end
7 of the year the entire labor cost is in there --

8 A Right.

9 Q -- the current rate would not even reflect the
10 entire \$23; is that correct?

11 A All other things being equal, you are right.

12 Q Okay.

13 Now, Mr. Meitch, there have been a number of exhibits
14 introduced into evidence indicating that there is a
15 freeze on reimbursement rates for 1976.

16 As a matter of fact, I believe that the -- I believe
17 that a bill was put into the legislature sponsored by
18 the Governor requesting a freeze, a 15-month freeze to
19 extend to March 31st of 1977.

20 Is that correct?

21 A There was such, yes.

22 Q Right.

23 A But it was not passed, though.

24 Q I know that.

25 Now, I note as recently as yesterday --

JUDGE HERZEL: Excuse me.

1 Is that in indicationg that the freeze might be
2 -- might possibly be lifted sooner than the 15 months
3 that the Governor wanted?

4 THE WITNESS: Well, what the Governor proposed is
5 that there be a freeze in nursing home rates for 15
6 months, January 1, 1976 through March 31, 1977 and they
7 would be frozen at the 1975 level.

8 The only thing is that the legislature passed a
9 bill, which the Governor subsequently signed, and obviously
10 approved into law, which stated in there that the rates
11 of payment for nursing homes for theperiod of January 1,
12 1976 through March 31, 1977, not be frozen but the rates
13 of payment would be computed taking into account
14 prudent buyer concept and also taking into account the
15 rating of medical facilities.

16 So we would take into account prudent buyer in 1976
17 rates and also relate reimbursement to the levels of care
18 being provided by facilities.

19 JUDGE HERZEL: Is this likely to be retroactive
20 in its effect?

21 THE WITNESS: It will be retroactive to January 1,
22 1976.

23 The Commissioner is hoping that the rates will
24 be out by August 1 of 1976.

25 JUDGE HERZEL: I see.

1 Q Mr. Meitch, as recently as yesterday, Dr. Kevin Cahill
2 -- are you familiar with Dr. Kevin Cahill?

3 A Yes.

4 Q Will you state for the record who Dr. Cahill is?

5 A He is the Governor's advisor on health care.

6 Q Dr. Cahill is quoted in the paper, the New York Post
7 last night, in commenting on the impending strike of
8 the District 1199 of the voluntary institutions, that is,
9 hospitals and nursing homes, which has been set for
10 July 7th, as saying:

11 "There is no additional money to increase Medicaid
12 rates."

13 And then there's a further comment:

14 "By State law, Blue Cross payment rates are linked to
15 Medicaid; one-half of Medicaid comes from the Federal
16 Government and one-quarter from the State and locality."

17 Now, based on Dr. Cahill's statement, is there any
18 reason to believe that the rates, the so-called interim
19 rates are not in effect for all practical purposes, the
20 rates that the homes are likely to enjoy for 1976?

21 A I would have to say that what Dr. Cahill is -- or,
22 Dr. Cahill is commenting on there is the rates of pay-
23 ments to hospitals.

24 And the hospital rates of payment have been computed
25 by the Department; they are pretty much known by the
providers themselves, but they have not been released.

1 So 1976 rates of payments for hospitals have been
2 computed and they are waiting budget approval.

3 I would assume that Dr. Cahill is referring to
4 hospital rates of payments and not to nursing home rates
5 of payments.

6 Q Mr. Meitch, I think before you testified --

7 A Excuse me.

8 But I would have to extend those and also say that
9 while he was probably referring to hospitals, also
10 implied in all of this is the fact that for 1976 nursing
11 homes and health-related facilities, there is not much
12 more money over the 1975 monites to be paid.

13 Q So that my clients have no reason for exuberance
14 at this time in anticipation of the rates that may be
15 the permanent rates for 1976?

16 A Well, as I said, the current rates are interim
17 rates, and there will be final rates taking into account
18 prudent buyer and relating reimbursement to levels of
19 care being provided.

20 The only thing is certain facilities may have some
21 of their costs disallowed as being excessive, and
22 other facilities may receive pure 1974 costs projected
23 into 1976 allowing for a full inflation factor.

24 JUDGE HERZEL: What's the prudent buyer basis mean?

25 THE WITNESS: Well, your Honor, basically what the

1 prudent buyer means is that the State not reimburse
2 facilities amounts for specific areas like dietary
3 costs or housekeeping costs which would appear to be an
4 amount that an able purchaser would not pay for the same
5 amount.

6 JUDGE HERZEL: I don't think I understand.

7 Can you give me an example?

8 THE WITNESS: Well, your Honor, for instance, if it
9 is determined that a reasonable cost on a per diem basis
10 of providing a dietary operation in a nursing home is
11 \$3, the department would say that we will not pay in
12 excess of \$3 in our reimbursement rates of payment.

13 JUDGE HERZEL: Okay. Thank you.

14 BY MR. REIER:

15 Q Mr. Meitch, before you testified, I think there was
16 some question raised as to whether the rates which the
17 department sets are appealable.

18 Now, are these interim rates that have been said,
19 are they appealable?

20 A Yes, and no.

21 The interim rates would not be appealable from the
22 standpoint that a provider could come to the department
23 and say:

24 We want an adjustment to our rate because we believe
25 the interim rate does not cover costs.

1 An appeal will not be recognized or considered
2 on that basis.

3 However, if a facility were to say to us that we
4 have a medical director in 1974 that we never had before,
5 or are providing services that we never had before, we
6 would handle those appeals.

7 And so for newer, expanded services, appeals will
8 be handled; but for just costs increases or things that
9 relate to the actual calculation of a final rate, we can't
10 consider because we don't have final rates.

11 Q I see.

12 So that the-- that there is no appeal that would
13 lie for the determination of your interim rates for the
14 labor costs arriving out of the collective bargaining
15 agreement beginning January 1, 1976?

16 A There would not be on the interim nor on the final.

17 Q Nor on the final?

18 A That's correct.

19 Q Now --

20 JUDGE HERZEL: Well, when you finally calculate
21 this final rate for 1976, aren't you likely to take into
22 account actual labor costs?

23 THE WITNESS: Well, your Hono, what we will do in
24 calculating the final rates of payment, the first thing
25 we do is take a look at the 1974 costs of the facilities.

We would group the facilities by their size, also

1 the type of care being provided, and we would then develop
2 ceilings by various cost centers like dietary, house-
3 keeping, nursing, and then having set the various ceilings,
4 or standards, we'd say no medical facilities' costs could
5 exceed these ceilings.

6 We would then determine the actual allowable costs
7 of a facility in 1974 and then project those 1974 costs
8 into 1976, allowing for an inflation factor to cover
9 good increases as well as wage increases.

10 The way we arrive at the wage increases, your Honor,
11 is using a survey that is conducted jointly by the Civil
12 Service Department of the State of New York and the
13 New York State Health Department which pretty much receives
14 data from hospitals, and as hospitals' costs have increased
15 over the period, we will allow the same increase in
16 future periods.

17 And so when we arrive at the wage increase for
18 1976, it will not be appealable, nor will the food be
19 appealable; nothing will be appealable.

20 JUDGE HERZEL: Well, I wasn't so much concerned
21 with the appeal as to whether or not you actually would
22 at that time, since you are now looking backward in setting
23 the 1976 rate, you wouldn't look at actual labor costs
24 that have been incurred on a general basis?

25 THE WITNESS: No, we would not.

We would use our --

1 JUDGE HERZEL: You would not?

2 THE WITNESS: No.

3 We would use our original trend factor as computed
4 for the hospitals but weighting it differently for the
5 nursing homes, because the nursing homes have a different
6 mix of labor to nonlabor than do the hospitals.

7 So we would use the same price movement, but the
8 weights would differ.

9 JUDGE HERZEL: Well, in the case of the hospitals,
10 I suppose you do have some figures on actual costs?

11 THE WITNESS: No; again, your Honor, it would not
12 be on 1976 actual wage costs.

13 JUDGE HERZEL: Would it be a 1975 actual?

14 THE WITNESS: '75 actual costs, yes, sir.

15 JUDGE HERZEL: I see.

16 BY MR. REIER:

17 Q Mr. Meitch, are you familiar with a Mr. Donald B.
18 Davidoff?

19 A I am, yes.

20 Q And who is Mr. Donald B. Davidoff?

21 A He's my boss.

22 Q He's your boss?

23 A Yes, sir.

24 Q Now, Mr. Davidoff wrote a letter in December of
25 1975, December 22nd -- and I must say it's caused considerable

1 confusion in the nursing homes and also those employees
2 and those representing employees in the nursing homes.

3 Let me read you, in part, the -- and perhaps you
4 could clear up the confusion.

5 "The recent amendments to Part 86 of the Commissioner's
6 rules and regulations do not prevent 1975 Medicaid rate
7 appeals for union negotiations effected prior to November
8 of 1975.

9 "The new rules do prohibit health facilities from
10 obtaining rate revisions because of labor negotiations,
11 effective since that date."

12 Now, let me tell you the confusion, where the confu-
13 sion lies.

14 There was one school of thought that felt that
15 if a contract was negotiated prior to November 1975, but
16 part of it was to be implemented subsequent to November
17 of 1975, that increases subsequent to November of 1975,
18 would be allowed.

19 The other school of thought took the contrary
20 position, that any increase which became effective subse-
21 quent to November of 1975, without regard to the time
22 of the negotiation of the increase, would not be allowed.

23 Can you shed some light on that?

24 A The latter is correct.

25 And basically what the revision was, we're saying

1 that for the 1975 Medicaid rates of payment, we would
2 recognize increases incurred prior to November of 1975
3 but not subsequent to November of 1975.

4 However, in developing rates of payment for 1976,
5 we would not take into account any wage increase negotiated
6 at any time during 1975.

7 Q I see.

8 So that the increases which are involved in this
9 proceeding, which were negotiated in 1974 but are to be
10 implemented in 1976, would, under Mr. Davidoff's letter,
11 not be an allowable cost; is that correct?

12 A They were not in an area where you could appeal.

13 Again we would be taking 1974 costs, projecting
14 them into 1976, to take into account what we consider
15 to be reasonable wage increases of 1976 over 1974.

16 If a facility's actual wage increase is in excess
17 of that, we will not consider an appeal on that basis.

18 Q I see.

19 MR. REIER: Your Honor, I'd like to introduce into
20 evidence that letter of Mr. Davidoff, dated December 22,
21 1975.

22 MR. EDELMAN: No objection.

23 JUDGE HERZEL: Which one is that?

24 MR. REIER: That's a letter dated --

25 JUDGE HERZEL: Oh, this is a new exhibit?

MR. REIER: Yes.

1 JUDGE HERZEL: No objection?

2 MR. EDELMAN: No objection, your Honor.

3 JUDGE HERZEL: Received as respondent's Exhibit 13.

4 (Document so marked
5 Respondent's Exhibit 13,
6 received in evidence.)

6 JUDGE HERZEL: Just one question about that,

7 Mr. Meitch:

8 You say your source gathering, whatever agency it is,
9 looks at hospital costs.

10 Is that correct?

11 THE WITNESS: Yes.

12 JUDGE HERZEL: Do they, to your knowledge, take
13 a look at labor agreements that have been negotiated by
14 the General and principal hospital associations and
15 others of that sort when they are trying to determine
16 cost factors?

17 THE WITNESS: Okay.

18 First off, your Honor, I'd like to say that what
19 the department truly wants to do is in developing prospec-
20 tive rates of payment for medical facilities, is to say
21 take 1974 costs and project them into 1976 allowing for
22 what inflation in that area will be.

23 JUDGE HERZEL: Right.

24 THE WITNESS: And we would determine most of the
25 statistics from the Bureau of Labor Statistics for

1 food, fuel, things of that nature.

2 JUDGE HERZEL: Yes.

3 THE WITNESS: However, in the area of wages, at
4 this point in time the department does not have a good
5 measure of what wage increases are going up in the various
6 areas of the State.

7 And by "wages," I'm talking about not just health
8 care but wages of the entire economy of the area.

9 JUDGE HERZEL: I see.

10 THE WITNESS: We want to key in on the entire
11 economy and allow health care to go up as the economy
12 in general goes up.

13 Okay?

14 The only thing is since we do not have a statistic
15 to do that, we are using the hospitals only as a last
16 resort.

17 JUDGE HERZEL: And --

18 THE WITNESS: And once we develop this other
19 statistic, we are going to move to it.

20 The goal of the department is to allow wage increases
21 in the health care field, to the extent necessary, to
22 keep up with the general economy of the area.

23 But not having a model of the general economy of the
24 area, we have to in fact, your Honor, use something else--

25 JUDGE HERZEL: Yes, I understand.

THE WITNESS: -- which is the hospitals.

1 JUDGE HERZEL: But I'm curious as to whether or not
2 in trying to project whatever model you can use today,
3 that you do not -- whetheryou do or do not take into
4 account contracts for wage increases that were negotiated
5 years back that are projected years ahead, three and four
6 years, increases in 1975 in 1975, 1976, 1977?

7 THE WITNESS: Well, your Honor, what we would do
8 is survey each hospital in the State of New York.

9 They would report to us their cost increases for wages
10 from one year to another year.

11 We would determine what the hospital wage increases
12 are going up each year --

13 JUDGE HERZEL: Sure.

14 THE WITNESS: -- and allow that wage increase in
15 the nursing home field.

16 JUDGE HERZEL: So you would say --

17 THE WITNESS: And it takes into account all hospitals,
18 so it takes into account union facilities and non-union
19 facilities.

20 JUDGE HERZEL: And their contracts; right?

21 THE WITNESS: Yes.

22 BY MR. REIER:

23 Q Mr. Meitch, the responses to the Judge's questions,
24 do they represent a new policy of the State of New York
25 in setting rates?

A Yes, and the letter from Mr. Davidoff and also the

1 hospital memo referred to before refers to the State
2 position as of November of 1975.

3 And basically the reason the State took that position
4 is that in developing a prospective rate in the past, we
5 are taking base allowable costs projected on them and
6 allowing for inflation.

7 In many cases medical facilities gave wage increases
8 in excess of their trend factor.

9 The State position was to allow reasonable amounts
10 in excess of that for the simple reason that there was
11 a feeling, especially in the early 70's, that health
12 care employees were not paid comparably with people outside
13 the health care field and so to allow the catch up, we
14 did allow the facilities who gave reasonable increases in
15 excess of projection factor to appeal and be paid for
16 that.

17 However, the decision was made in 1975 that the health
18 care employees did catch up and so there was no need
19 to give special recognition to any increases in excess
20 of our trend factor, and also, of course, was the obvious
21 position of the State of New York and other localities
22 that were reaching the point where they just couldn't pay
23 for them any more.

24 Q Mr. Meitch, when the union, that is, the charging
25 party, Local 1115, and the various -- and the association

1 and the individual respondents bargained their contracts
2 in the latter part of 1974 or in some cases early 1975,
3 did they have any knowledge of this policy, this new
4 policy that you have just described?

5 A No, -- well, it was not reached until November of 1975.

6 Q I see.

7 Mr. Meitch, the method of setting rates, as I under-
8 stand it, is that rates are set prospectively using as a base
9 a period two years prior to for which the rate is to apply.

10 Is that correct?

11 A That's correct.

12 Q So that under normal conditions, for 1976 rate you
13 would use the 1974 and apply certain factors to it, to
14 that 1974 base; is that correct?

15 A Correct.

16 Q Now, Mr. Meitch, do you recall that during 1974,
17 the Economic Stabilization Act was in effect until
18 April 30, 1974?

19 A Yes, I do.

20 Q And that under the Economic Stabilization Act, there
21 were certain controls in effect?

22 A Correct.

23 Q So that if for 1976, you used 1974 as a base for
24 the group of employers involved in this proceeding, would
25 they not have an artificially low base, at least for part
of the year?

1 A It's possible for four months that the base could be
2 somewhat dampened, yes.

3 Q Can be somewhat what?

4 A Somewhat dampened, yes.

5 Q Mr. Meitch, are you familiar with hospital memorandum
6 75-159?

7 A I'm not sure.

8 Can I see it?

9 Q Well, let me show it to you (handing).

10 A Yes, I am familiar with it.

11 Q Now, that is signed by Commissioner McCann and
12 Deputy Commissioner Cicero; is that correct?

13 A Yes.

14 Q And was that memorandum promulgated to the various
15 nursing homes and health-related facilities throughout the
16 state?

17 A It was.

18 Q Now, I note this is dated October 31, 1975 and it says
19 that "New Legislation concerning 1976 reimbursement and
20 still unresolved aspects of Part 86 of the Commissioner's
21 rules have made it impossible to promulgate final health
22 facility rates at this time."

23 A Right.

24 Q "Final rates reflecting either upward or downward
25 revisions will be promulgated as soon as possible."

1 A Yes.

2 Q And these rates have not been, as yet, promulgated;
3 is that correct, these final rates?

4 A Final rate: for nursing homes and health-related
5 facilities have not been, correct.

6 Q I see.

7 MR. REIER: Your Honor, I would like to put into
8 evidence as Respondent's Exhibit 14, I believe it is --

9 MR. EDELMAN: Yes.

10 MR. REIER: -- State of New York Department of
11 Health Hospital Memorandum 75-159.

12 JUDGE HERZEL: Any objection?

13 MR. EDELMAN: No objection.

14 JUDGE HERZEL: R-14 is received in evidence.

15 (Document marked Respondent's
16 Exhibit No. 14, was
received in evidence.)

17 BY MR. REIER:

18 Q Mr. Meitch, are you familiar with Hospital Memorandum
19 75-160 (handing)?

20 A I am.

21 Q Is that the memorandum which was promulgated on
22 or about the October 31, 1975 date?

23 A It is.

24 Q Now, this memorandum, as I believe, sets forth the
25 bases for appeals from the determination of the Commissioner.

1 Is that correct?

2 A Correct.

3 It's one of the three items covered in here, yes.

4 Q Now, are labor costs, resulting from collective
5 bargaining, one of the bases for an appeal from the rate
6 prescribed by the Commissioner of Health?

7 A They are not.

8 Q And is this memorandum 75-160 still in effect?

9 A It is.

10 Q It has not been rescinded or revoked or modified?

11 A Correct, it has not been.

12 MR. REIER: Your Honor, I'd like to put into evidence
13 State of New York, Department of Health Hospital Memorandum
14 75-160, dated October 31, 1975.

15 JUDGE HERZEL: Any objection?

16 THE WITNESS: Excuse me.

17 I would have to make one comment.

18 86-17 has just recently -- may have been revised but
19 not to effect the topic being discussed here.

20 It has to do with groupings for hospitals.

21 MR. REIER: I see.

22 MR. EDELMAN: No objection.

23 JUDGE HERZEL: 86-17 is the previous memo; is that
24 correct?

25 MR. EDELMAN: 75-159, I think it was, your Honor.

MR. REIER: 75-160 is the one I'm offering now.

JUDGE HERZEL: What was the reference that the witness just made?

MR. REIER: It referred to Section 86-17.

JUDGE HERZEL: I see.

BY MR. REIER:

Q That is 86-17 what?

A Of the Commissioner's Rules and Regulations.

JUDGE HERZEL: R-15 is in evidence.

(Document marked Respondent's Exhibit No. 15, was received in evidence.)

BY MR. REIER:

Q Mr. Meitch, on the basis of what you know about establishing the permanent rates, which you indicated might be promulgated somewhere on or about August of this year, is there likely to be a continuation of the -- in the rate -- of the labor factor arising out of the collective bargaining settlements?

A The increase for wages to move 1974 nursing home wage costs into 1976 will be based upon the indexes arrived at from the survey I mentioned before, the Civil Service Health Department Survey that was sent out to hospitals in the State of New York.

In effect, whatever may be negotiated between the union here will have no bearing on the reimbursement rates developed for 1976.

1 Q I direct your attention, sir, to General Counsel's
2 Exhibit No. 2, which calls for an increase of \$9 per
3 week effective January 1, 1976 and \$8 per week effective
4 July 1, 1976 and another fringe benefit including addi-
5 tional days sick leave and certain modification in the
6 provision for payment as to working on a holiday.

7 Is it reasonable to expect that those adjustments
8 that are contained in this collective bargaining agree-
9 ment will not be reflected in the rates that the -- the
10 permanent rates that are supposed to be promulgated on or
11 about August of this year?

12 A Again, we had been taking the '74 costs, determining
13 the movement from the hospital survey, projecting those
14 '74 nursing home costs into 1976, and those rates
15 of payment taking into account those wage increases
16 will be the final rates of payment, that is, regardless
17 of what has been entered into between these facilities
18 and Local 1115.

19 Now, as to whether or not the amount we apply on top
20 of the 1974 costs for wage increases in 19 -- through
21 1975 and 1976 will cover what is actually going to be
22 paid under this contract for 1976 is something I honestly
23 can't answer without looking at the figures.

24 It's -- I just couldn't comment on it.

25 Q I see.

1 What --

2 JUDGE HERZEL: What you are saying is that you
3 don't take those into account as such, you are taking
4 the general trend factor?

5 THE WITNESS: Right.

6 JUDGE HERZEL: And it might or might not include
7 part or all of these 1974 actual increases?

8 THE WITNESS: Yes.

9 JUDGE HERZEL: You just don't know?

10 THE WITNESS: Right.

11 BY MR. REIER:

12 Q The wage adjustments last year proved to be 17.1
13 per cent.

14 Is it safe to --

15 A I'm sorry, what was the figure?

16 Q 17.1 per cent.

17 Is it likely, Mr. Meitch, that that trend factor
18 will be continued for 1976 in the permanent rates,
19 when they are set?

20 A I --

21 MR. GREENSPAN: I'm going to object.

22 I don't know where counsel is getting into information
23 as far as the past trend.

24 MR. HULL: It's already in evidence.

25 MR. GREENSPAN: If it's in evidence, I think it

1 speaks for itself.

2 JUDGE HERZEL: Where is it in evidence?

3 MR. GREENSPAN: The Local 1115 contracts are in
4 effect.

5 MR. REIER: I think, your Honor, when he went up
6 to speak with Mr. McCann, he took the memorandum of
7 settlement, and it was pointed out that the labor costs
8 represented an increase of 17.1 per cent.

9 That is in evidence, your Honor, that testimony.

10 MR. CUTLER: As produced by the State Health
11 figures.

12 MR. REIER: Mr. Cutler now informs me that that
13 figure was arrived at by the staticians for the New York
14 State Department of Health.

15 JUDGE HERZEL: Well, apparently this man doesn't deal
16 in those figures, he deals in trends.

17 I don't know that he's competent to answer a
18 questionlike that.

19 THE WITNESS: Could I?

20 JUDGE HERZEL: Yes.

21 THE WITNESS: On that point there, your Honor, what
22 Mr. Cutler is referring to is that he was saying that in
23 1975 when the department recognized the wage increase
24 in 1975, we considered that factor on top of what we allowed.

25 If the wages given by the Association were in excess of

1 our projection factor, then we did allow that amount.

2 Now, you could argue that since we are taking 1974
3 costs and running them into 1976, the point is, will that
4 17.1 be allowed again?

5 And I would have to say that it's very unlikely that
6 we would allow anything like that.

7 BY MR. REIER:

8 Q To summarize, Mr. Meitch, that the procedure you are
9 now using because of the fiscal crunch and for whatever
10 other reasons represents a departure from the procedures
11 used in prior years; is that correct, in establishing
12 rates?

13 A Yes.

14 Not only because of the fiscal crunch but again because
15 of the fact that the feeling of the State is that the Health
16 care employees have caught up with the employees in the
17 general economy, so that there is no need to recognize
18 increases in excess of what the economy is moving.

19 Q Mr. Meitch, are you familiar with the concept of
20 the trend factor?

21 A Yes.

22 Q And what is the trend factor that is currently
23 being used?

24 A The actual amounts?

25 Q The percentage.

A The percentage?

1 Q Yes.

2 A It differs by area of the State and it differs by
3 type of facility.

4 Q I see.

5 A And there are a substantial number of trend factors.

6 MR. EDELMAN: Your Honor, it appears to me that the
7 testimony that we are getting here is becoming cumulative.

8 It all goes to the effect that the rates are frozen,
9 which we concede; it all goes to the effect that there is
10 little likelihood that the rates will be unfrozen.

11 If there is any further evidence, you know, any new
12 and additional evidence that you expect to elicit from
13 the witness, I have no objection to it.

14 But if it's just going to be --

15 MR. REIER: I just have one or two more questions.

16 MR. EDELMAN: Okay.

17 BY MR. REIER:

18 Q You say now that the trend factor varies depending
19 on locality.

20 Is that correct?

21 A Yes.

22 Q Now, I've heard a trend figure used of about 6 and a
23 half per cent for the area that we are concerned here
24 with, that is, the Nassau-Suffolk Counties.

25 Does that strike any respondent cord, that 6 and a
half per cent figure?

1 A That would be for wages for 1976?

2 Q Overall.

3 A Overall for '76 over '75, it sounds reasonable.

4 Q And that six and a half per cent would include a
5 trend factor for all allowable costs; is that correct?

6 A For all allowable costs.

7 In other words, you would have an amount to allow
8 '74 costs into '75, '75 into '76.

9 And what you are referring to by the figure of 6
10 and a half would be to move the '75 to the '76.

11 And again it takes into account all price movements
12 -- food, fuel, wages.

13 Q I see.

14 MR. REIER: I have no further questions of this
15 witness.

16 MR. EDELMAN: I just have a couple of questions of
17 Mr. Meitch, your Honor.

18 JUDGE HERZEL: Proceed.

19 CROSS-EXAMINATION

20 BY MR. EDELMAN:

21 Q I take it that you are not present when the union and
22 when the company sit down to negotiate collective bargaining
23 agreements, are you?

24 A I am not present.

25 Q And I take it or your agency by whom you are employed

1 have any control over the wage proposals submitted by the
2 union or the wage proposals submitted by the company;
3 is that correct?

4 A We have no control.

5 Q And I take it also that you have no control over
6 the wages that may be agreed by the parties?

7 A Correct.

8 Q In other words, they are free, as far as your agency
9 is concerned, to negotiate whatever wage agreement they
10 can agree upon; is that correct?

11 A All we can do is set what we will pay for a medicaid
12 patient.

13 Q Right.

14 and they are free to negotiate what they will agree
15 upon paying?

16 A Correct.

17 Q Right.

18 It's their choice as determined by what their bar-
19 gaining and what their agreements will result in?

20 A That's their role as management.

21 Q Exactly.

22 Now, Mr. Meitch, I take it that -- do you see collective
23 bargaining agreements?

24 Are they submitted to your agency so that you can
25 examine wages of various nursing homes and health-related

1 facilities?

2 A Yes.

3 In the past whenever a facility would enter into
4 some type of a contract, whether it be a union or it could
5 even be a non-union group, the contracts did not provide
6 for a sufficient amount to cover the contract, the facility
7 would appeal, and they would submit copies of the contractx.

8 We would cost them out, determine what we were giving
9 them for the wages and what the contract called for.

10 In the past, we would recognize reasonable cost
11 increases over what was projected.

12 Q So then I take it that you basically only see collective
13 bargaining agreements that would come across your desk
14 through appeals?

15 A Correct.

16 Q But in the process of seeing these collective bargain-
17 ing agreements, I take it that the wages that one home
18 may agree to pay would be different from the wages that
19 another home may agree to pay?

20 A Sometimes very much differently or it could be a group
21 acting together.

22 Q One association might be different from another
23 association?

24 A That's correct.

25 Q And the ultimate wages that are set in the contracts

1 are matters that are agreed upon privately by the union
2 and by the association or by the individual nursing home?

3 A Yes.

4 MR. EDELMAN: I have no further questions.

5 JUDGE HERZEL: Does anybody else have any further
6 questions?

7 MR. HULL: I do.

8 THE WITNESS: May I just state something here,
9 your Honor?

10 JUDGE HERZEL: Yes.

11 THE WITNESS: I would just like to expand it somewhat,
12 your Honor, and have to say to you that our goal is not
13 to get involved at all in the negotiations between
14 management and the employees.

15 The only thing is that in the past, there were times
16 when the State acting as arbitrator of various settlements
17 maybe would appoint an arbitrator, maybe the department
18 would be called in to testify and maybe the State -- and
19 you must remember that I represent the State Health
20 Department -- but maybe the State, being the Governor
21 or the legislature, would say that we are to recognize a
22 contract of such amount after arbitration and so forth.

23 The only point I was trying to make is when you say
24 we don't get involved, the State itself may get involved.

25 MR. EDELMAN: I see; okay.

JUDGE HERZEL: Show the witness the letter, R-9, please.

1 Doesn't the third or last paragraph of that letter
2 state your labor policy?

3 THE WITNESS: Right, it does.

4 It says, "It is not, nor has it been the State's
5 policy to participate in any labor negotiations other
6 than with its own workers."

7 The point that I was trying to make, your Honor,
8 is that in the past there were instances of where there
9 was threatened strikes and so forth at which the Governor
10 would appoint an arbitrator, a State arbitrator, to try
11 to arrange an agreement and that those sessions there,
12 with State people, including the arbitrator. That's all
13 I was trying to bring out.

14 JUDGE HERZEL: Yes.

15 Thank you very much.

16 CROSS EXAMINATION

17 BY MR. HULL:

18 Q Sir, are you familiar with the Board of Inquiry's
19 report concerning the inquiry made with Local 1199,
20 the problems going on now with the hospitals in New York
21 City?

22 A No, I am not familiar with it.

23 Q Have you -- have you seen a copy of it?

24 A No, I have not.

25 MR. HULL: No further questions.

1 JUDGE HERZEL: Does anyone else have anything for
2 this witness?

3 Mr. Reier, anything else?

4 MR. REIER: May I have a moment, your Honor?

5 JUDGE HERZEL: Yes.

6 REDIRECT EXAMINATION

7 BY MR. REIER:

8 Q Mr. Meitch, you are familiar with the composition of
9 the Nassau County Health Facilities Association, the
10 group that Mr. Cutler is president of?

11 A Somewhat so, yes.

12 Q Fine.

13 Do you know -- and you know they bargained on an
14 association-wide basis for sometime?

15 A Right.

16 Q To the best of your knowledge, Mr. Meitch, have any
17 of the labor costs arriving out of settlements under
18 that agreement been disallowed by your office or by your
19 division?

20 A To my knowledge -- and I would have to say that I will
21 go back as far as, say '70-71, I think they have been
22 allowed, yes.

23 MR. REIER: No further questions.

24 RECROSS-EXAMINATION

25 BY MR. HULL:

1 Q And that would likewise apply to the Saint James
2 Nursing Home and the Saint James HRF, which is not a part
3 of that association?

4 A But again it's like a tandem or the same?

5 Q Yes.

6 A Yes, I am pretty sure it has.

7 REDIRECT EXAMINATION

8 BY MR. REIER: (Cont.)

9 Q Would that also apply to a Carillon House and Health-
10 related facilities and Huntington Nursing Home facility
11 which also bargains in tandem with the association?

12 A I'm pretty sure, yes.

13 MR. REIER: I have no further questions, your Honor.

14 JUDGE HERZEL: All through?

15 MR. EDELMAN: Yes.

16 MR. HULL: Yes.

17 MR. REIER: Yes.

18 JUDGE HERZEL: Thank you, Mr. Meitch.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 MR. REIER: Your Honor, I had another witness,
22 but in view of our previous understanding of avoiding
23 cumulative testimony, I will not call Mr. Dan Horan, who is
24 the accountant for the Association and about six of the
25 individual respondents because I think his testimony would
be largely cumulative of the testimony that Mr. Meitch has

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 77-4085
	)	
NASSAU COUNTY HEALTH FACILITIES,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's brief and one (1) copy of the appendix each in the above-captioned case has this day been served by first class mail upon the following counsel at the addresses listed below:

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this 17th day of June, 1977.